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RAIL SAFETY

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

RAIL SAFETY

Part 2

JUNE 2, 1987

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RAIL SAFETY

TUESDAY, JUNE 2, 1987

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:13 p.m., in room SR-253, Russell Senate Office Building, Hon. J. James Exon (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Robert Holleyman, staff counsel; Sheryl Webber Washington, professional staff member; and Gerri Hall, minority professional staff member.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. The Subcommittee will come to order, please.

This afternoon the Surface Transportation Subcommittee is holding a hearing on the issue of rail safety. This is the Subcommittee's second hearing on this subject for the year. The record developed through these hearings will help the Commerce Committee fulfill its responsibilities to insure that rail transportation in the United States is as safe as it can be.

During the subcommittee's initial hearing on February 17, we received an assessment of the level of rail safety from the Federal Railroad Administration, rail labor and railroads. That enabled us to learn more about the causes of the Amtrak/Conrail accident on January 4.

I have scheduled this second hearing on rail safety for two reasons. First, it will enable us to build our record on some of the specific legislative options that are available to the Committee. In particular, I will be interested in hearing more about the proposal for higher civil penalties, FRA authority over individuals, standing for rail employees to sue to compel enforcement of safety laws, protection against harassment of rail workers, and for licensing of operating personnel.

In addition, I also feel that we need to hear from the individuals who work on the railroads on a regular basis. Our second panel is comprised entirely of individuals from outside of Washington and who work on the railroads in a variety of crafts. It is my hope that they will be able to provide the Subcommittee with their personal observations and experiences regarding the level of safety in the industry from their perspective.

I will be particularly interested to know how they feel the FRA and the railroad safety regulations are being enforced in day-to-day situations.

I would also like to note that in addition to my colleague, Senator Lautenberg, and other witnesses who will testify this afternoon, we have with us Dr. Roger Horn. Dr. Horn's daughter was killed in the Amtrak/Conrail collision in January. While I deeply regret the great loss which Dr. Horn and his family have sustained, all of us on the Committee appreciate his being here today and his very diligent efforts to improve transportation safety.

It is my hope that through drug and alcohol testing and the bills that we are moving in that area which have already been approved by the Commerce Committee and through measures such as rail safety reauthorization, which is the focus of this hearing, we are acting in ways that will result in genuine improvements in the overall level of rail transportation safety in this country.

Senator Hollings has submitted a statement for the record.

[The statement follows:]

OPENING STATEMENT BY THE CHAIRMAN

The hearing today is the second one the Surface Transportation Subcommittee has convened this session on Rail Safety. I wish to commend Senator Exon, the Chairman of the Surface Transportation Subcommittee for scheduling a second hearing on this important subject.

Rail safety continues to command a great deal of public attention. It is appropriate that we conduct these hearings in our oversight capacity to hopefully aid in the prevention of another tragedly like the one that occured in January of this year in Maryland where so many lives were lost, as well as the many other accidents around the country where rail employees have been the primary victims.

As the Subcommittee considers the legislative initiatives introduced this Congress to try to improve rail safety, it is important that we hear from those who are closest to the issue and most knowledgeable about the impact of the proposed legislation. For these reasons, we are pleased to have representatives present this afternoon from the Federal Railroad Administration, the rail industry, and rail labor, as well as actual railroad workers, and a family deeply affected by and interested in rail safety issues.

There are a number of legislative proposals and safety considerations the Committee would like addressed today by the witnesses—issues ranging from sanctions and penalties for violations of the Federal safety laws, qualification standards for equipment inspections, to uniform Federal licensing of railroad operating personnel.

I am hopeful that this afternoon's testimony will further assist the Committee as it considers the issue of rail safety and the proceeds with legislation to reauthorize the Federal rail safety program.

Senator EXON. With those remarks, I am pleased to now recognize my great friend and colleague, the Senator from New Jersey, who has been at the forefront in this safety effort from the beginning, for any statement that he cares to make.

Senator Lautenberg.

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thank you very much, Mr. Chairman. I appreciate the opportunity to appear before you. I know that you have a full slate of witnesses this afternoon. I will keep my comments brief.

If I may, Mr. Chairman, however, I would like also to add my commendation to yours of Dr. Horn, whom I had an occasion to meet at an earlier hearing shortly after the accident, for his willingness to bare his tragedy in front of the public in the hopes that his daughter's death will in some way help avert accidents of such types, tragedies of such proportion, from ever happening again.

On February 17 I testified on rail safety before this subcommittee. That was in the wake of the tragic accident in Chase, MD on January 4. That accident, the one that took the lives of 16 passengers, injured 175, and caused damage exceeding $15 million, focused our attention on rail safety, and brought serious issues to light. It forced us to take a close look at rail safety altogether and how we can improve it.

S. 1098, the Rail Safety Improvement Act, is the product of that effort, and I am pleased to have Senator Mikulski as a cosponsor. The crash is months behind us. For the average rail passenger, Chase no longer weighs heavy on the mind, but for us it should. We know that too little has changed. Too little has changed to stop another Chase from happening.

S. 1098 is a comprehensive bill. It provides for increased penalties for safety violation. It empowers DOT to move against individual workers as well as companies when safety rules are broken. It provides protection for workers who will blow the whistle on hazards that they see. It makes sure maintenance and safety inspections are done by requiring written certifications. It makes new safety projects eligible for the Northeast Corridor Improvement Project funding.

It requires installation of ATCs, automatic train controls, on the Corridor. If the Conrail train had had an ATC, the crash might never have happened.

So I am pleased that DOT has responded with a proposed rule to put in ATCs. The bill sets a deadline of December 31, 1989. Unfortunately, Secretary Dole's proposal is not as firm. I hope the Subcommittee will take a look at this matter and agree that requiring automatic train controls is a step that should be taken sooner, not later.

Unfortunately, there is another aspect of the bill that has not been well received by the administration. The bill outlines Federal standards for qualifying railroad operators. The bill would assure that the man or woman in the cab of the train has the skills to be there. Section 2 of S. 1098 would establish a Federal licensing system for those operating our trains. It would set minimum uniform standards to be met by all train operators.

Mr. Chairman, this proposal would not set a precedent. It would follow one. Airline pilots have to have a Federal license. This summer, commercial truck drivers come under Federal licensing standards. Certainly railroad operators should come under similar requirements.

I do not mean to suggest that railroad engineers are generally unqualified. On the contrary, the professional capability is by and large excellent for all. But we have seen the tragic consequences when someone is unfit. We need to screen out irresponsible workers and help protect the public safety. That is something we just cannot leave to the railroads. That is, in my view, a government responsibility.

The bill would set minimum standards for content and duration of training programs. It would require certain operational skills. It would also require regular license renewals and annual medical examinations. Reasonable periodic drug and alcohol testing would also be required.

Finally, to help insure that those operating our railroad engines are responsible and reliable, section 2 would authorize the use of information in the national driver register in review of an application for licensing. The applicant would have the right to review and comment upon that information. There is no excuse for blindly allowing a person who has shown a history of drunk or reckless driving to operate a railroad train.

Mr. Chairman, this is a sound proposal. It would help maintain a work force that is skilled and responsible and, most importantly, it would help protect the public against those who might place passengers, cargo or the general public at risk.

Mr. Chairman, those who run trains carrying hundreds of passengers or tons of cargo, perhaps hazardous cargo, carry with them a heavy responsibility to carry those passengers and that material safely. As more and more information came out following the January 4 tragedy, we saw how little we knew about the people operating our trains. The public has a right to know that they are responsible, adequately trained and fit to run those trains. My bill would help provide those assurances.

The administration seeks the authority to sanction individual employees. They do not feel the companies can be entrusted with the responsibility. Yet the administration shuns a role in insuring that those operating our trains are qualified and fit. I find that somewhat inconsistent.

An ounce of prevention, it is said, is worth a pound of cure. Rather than wait for an accident and then go after an engineer, we ought to take the steps to make sure that they are fit to be in the cab in the first place.

Mr. Chairman, that concludes my testimony. I thank you for presenting me with this opportunity to testify. As chairman of the Transportation Appropriation Subcommittee, I look forward to working with you, as we have in the past, and your subcommittee on these and other issues.

Senator EXON. Senator, thank you very much. I just have one question on one point. I recognize the bill that you have introduced is an all-encompassing one, and of course we are looking at that bill along with so many others that we are wrestling with to address this problem.

We have never previously had Federal licensing or any licensing of engineers on the road. You think that is obviously necessary if we are going to maintain the right type of people who are qualified and trained, and you would envision in your legislation that they would have to take an examination of some type to prove their basic qualifications; is that correct?

Senator LAUTENBERG. Yes, Mr. Chairman, I would, because what we are talking about are minimum standards; but at the same time, in addition to the so-called professional qualifications, we would be looking at fitness, both physical, mental and emotional, to do that job.

Frankly, I find it peculiar, at least, that someone who operates an airplane which might be carrying only a dozen passengers has to be licensed when a railroad operator who could be transporting

1,000 passengers, and that is the size of some of the trains that come down here, does not have to be.

Frankly, I think, though it does impose a burden, it measures up to the responsibility that we have to protect the traveling public. So I would be looking for something which would not preempt the railroads. Certainly, it is my belief that every one of the railroads has qualifications, has training programs that would meet fairly rigid standards. Whether they are kept up or not, we do not know. We do not know whether there is a hitch someplace that they do not meet, and I frankly would like to see that we are assured that at least the minimum standard is being met.

Senator EXON. The general theory has been that the railroads and railroad unions over the years have been very safety conscious, the railroads obviously because if any accident occurs they are heavily involved financially, because they are generally proud of their safety record on the railroads, and I think they have a right to be, and the fact that through the railroad companies and their unions they have had a pretty effective training program where they brought people up along.

Have you received any information in testimony or have you heard any information that would lead you to believe that some of the shortcomings of the engineers were other than possible abuse or misuse of alcohol and drugs or, stating it another way, is not the possible use of alcohol or drugs, which obviously would impair the judgment and the ability of an engineer to run a train, probably even more important in the overall safety problem as we view it today than even the licensing of a railroad engineer?

Senator LAUTENBERG. Mr. Chairman, certainly we have seen enough specific evidence that substances, whether alcohol or drugs, have played a part in some major accidents that we have had. A major accident does not mean a quantity of people losing their lives. It means any major accident in which perhaps one person loses their life or substantial damage to the community occurs.

Mr. Chairman, I ask you in return, if someone tapes up a warning whistle, we certainly cannot say that that is a drug or an alcohol problem. Perhaps it is not a question that is asked when railroads promote or develop their personnel. Perhaps we can make it information as well.

I know that in my state when you apply for a driver's license, you get a whole book on what your obligations are as a driver in addition to learning how you make a turn and where you stop and speeds and things of that nature.

I frankly think from testimony that we have heard there are serious questions whether or not personnel are being asked to do the job without appropriate maintenance, without appropriate safety. Maybe in terms of the review of the license requirements questions such as that are also asked. Maybe it imposes upon the licensee a burden to see that they have gone through a checklist, that they understand that in accepting this license that there is some kind of very severe penalty if they violate the license requirements by the use of alcohol or some other substance.

I think, Mr. Chairman, your question is a very good one, but I think if we are looking for a comprehensive bill or looking for a fairly broad coverage kind of thing, maybe we will not get it in the first instance, but if we start the process, certainly I think we can rest back with a feeling that we have done our job to make the community a safer place.

Senator EXON. Thank you, Senator Lautenberg. I have no further questions.

Senator Pressler, do you have any questions?

Senator PRESSLER. Thank you very much for presenting this thought-provoking bill on this important issue. I am very concerned about the safety of some of our freight railroads also.

I am also concerned about some of the short line railroads which are increasingly serving our communities, and, of course, there is a safety issue there. I have been wrestling with this problem, and certainly it is one that we have to address in some way.

I am not criticizing your bill or your approach, but I am just asking as a question here, would there be some labor protective provisions in here? It is not necessarily bad if there are, but let us take a small short line railroad where there has to be more flexibility on performing different tasks and so forth. Would this bill have some elements of labor protection in it?

Senator LAUTENBERG. Well, Senator Pressler, I have not looked at it with that in mind. I will tell you this, that it is never my intention to violate any agreements that labor has negotiated or constitutional rights that each one of us has as citizens.

The question about the short line, the intrastate line, intercity, intrastate, has arisen many times. Wherever there has been a Federal participation, I think we certainly have the right to make demands of the operators very much in the same way that we do with those that operate interstate.

Senator PRESSLER. As I understand it, would this mean that before you are issued a license here, your car driving record be taken into account? If you move from one state to another would this be required to be taken into account? How far back would the record check go?

Senator LAUTENBERG. Obviously you are aware, Senator, that we are trying to get established a national driver registry to acquire information on those drivers who are constant violators of the law, who have been punished as a result of accidents, and I would say that the record ought to be open.

I do not know that we ought to reach back to something that is 20 years old if we get that much information, but certainly I think judgments can be made based on how the information is going to be used. Maybe there will be a standard that says nothing more than three years of history is going to be eligible for review, but I really do think that it is important to find out whether someone who has constantly broken safety rules in the state, constantly caught speeding, caught drunk while driving. I do not think he or she ought to get behind the throttle of a train or the wheel of a car or the throttle of an airplane.

Senator PRESSLER. I certainly agree. As I understand it, now you can have a record in one state, move to another state, and it is virtually impossible to discover that unless you literally send investigators out.

Senator LAUTENBERG. If we have a national driver registry center, which is an objective that we would like to have.

Senator **Pressler**. But that would be supplemental. This bill does not provide that. That is a separate bill.

Senator **Lautenberg**. Yes, it is.

Senator **Pressler**. If someone had a drunk driver's conviction in the last three years for driving an automobile, would they be able to get an engineer's license under your bill?

Senator **Lautenberg**. Well, if you asked me for a quick judgment, I would say I hope not, but I think those kinds of standards are the type of things that you develop within a department, the Department of Transportation, as a standard based on the latitude given by the law.

Senator **Pressler**. You would not make an effort to build a legislative history to suggest something on that particular question? For example, if someone had a drunk driver's conviction within the last three years, what would be your personal judgment? Would they be issued a license to operate a train?

Senator **Lautenberg**. It would depend on what happened. I guess we would have to look at whether the State standard under which that person was convicted is something that is relatively de minimis, if that is possible, or if the person was so far over the blood alcohol content that they could not stand when they were outside the car, I would think that that is one kind of thing. If someone just breezed by a minimum standard and that was three years ago, I do not know that I would want to use that.

Senator **Pressler**. This is not a criticism because I think we need to consider this. I think it is a very creative approach. I guess the concern I have with your bill is that it might just be another exercise in issuing licenses. Of course, it would be up to all of us to offer amendments that might bring standards into it, but unless we were willing to address, for example, what we were talking about in the bill, I am afraid it might just be an exercising in issuing licenses. We hope that is not the case.

Senator **Lautenberg**. Certainly. I would agree with that. I think this is an exercise in safety. The Chase, MD accident is the one that is most prominent in our minds because of the magnitude of the horror, but there have been a number of very serious train accidents. You mentioned it yourself. A train carrying hazardous cargo could be much more dangerous to life and limb than the tragedy that we experienced in Chase.

So there have been a number of accidents. This is not a casual reference, and I certainly am not one who wants to put the government into any other businesses, but I think when we give someone the right to operate a railroad that goes through communities that could create disaster if something goes awry, I think we also have the right to ask them to conform to a minimum standard, both experientially and behaviorally. I do not frankly have a problem with it, and if it needs closer definition as we write the law, then maybe we ought to pin it down a little bit more.

I would hope that we can leave it to the department under whose jurisdiction this would fall to come up with at least a recommendation and consult with people from labor as well as the management of the railroads as well as the citizens at large.

Senator **Pressler**. I want to thank you very much for bringing your bill before us. Thank you.

Senator **Danforth** [presiding]. Senator Lautenberg, it is good to see you back in the Commerce Committee.

Senator **Lautenberg**. It is nice to be here, Mr. Ex-Chairman.

Senator **Danforth**. I may be the ex-chairman, but Senator Exon went and left me in charge, so we are going to start moving some legislation right now.

Thank you very much for your testimony.

Senator **Lautenberg**. Thank you. I know you have an active interest in matters of safety, whether they are in the road or in the air or on the rail, and I commend you for it. I know in particular you had an interest in trying to develop a data base so that those who have troublesome histories in terms of operating vehicles ought to have that information made available, so that as we make judgments about them we know what we are dealing with.

Thank you.

Senator **Danforth**. Let me ask you one question. Do you view the withdrawal of privileges to operate a vehicle or equipment as a penalty, or do you view it as a safety precaution?

Senator **Lautenberg**. I guess they get mixed. What we are saying is we want you to operate safely. That is first and foremost, and if you do not you are going to be punished by more than a casual conscience.

You have in front of you today, Mr. Chairman, the father of a young woman who was killed in Chase, Md. I remember his testimony, eloquent testimony, so vividly when he appeared before my subcommittee and how he was pleading for us to take the steps that would help insure that no other parent would undergo that experience.

However we get to that point, I think if it includes punishment, severe punishment——

Senator **Danforth**. Your view is that the point is not so much to punish. The point is to make sure that those whom we reasonably expect to have problems relating to the use of drugs or alcohol should not be in a position where they endanger people's lives. It is more of a safety requirement, in other words, than a penalty.

Senator **Lautenberg**. It is the primary one. But I also want to elevate the consciousness of everybody who has a responsibility for operating any kind of a vehicle, train or otherwise. They know very well that they have an obligation that goes beyond just going to work everyday.

Senator **Danforth**. Thank you very much, Senator Lautenberg.

Senator Exon went to vote and asked me if I could keep the hearing going until he comes back. There are about five or six minutes left on the vote, so I am going to be leaving in a minute or two, but John Riley, do you want to start now, or do you want to wait?

Mr. **Riley**. Whatever is the preference. If you want to start, I will start. If you would like to break, I would be happy to do so.

Senator **Danforth**. Why not come and start, and I might stop you in a minute or two if Senator Exon does not show up.

STATEMENT OF HON. JOHN H. RILEY, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, ACCOMPANIED BY S. MARK LINDSEY, CHIEF COUNSEL; AND JOSEPH W. WALSH, SAFETY DIVISION

Mr. RILEY. Thank you, Mr. Chairman. I will take a brief moment here before we start to introduce on my right Mark Lindsey, FRA's chief counsel, and on my left Joe Walsh, a former senior officer with the Signalmen's Union who is the head of our Safety Division. It is a pleasure to be back before the Committee.

I am not going to go back over the basic data on the FRA safety program that I presented at the last hearing. That is already in the record. What I am going to focus on today are three things: where we stand today on safety, including the first quarter of this year; our proposal for jurisdiction over the employee and higher fine levels on companies; and then, finally, I will make an overview comment on the RLEA amendments. I have submitted a detailed, specific statement to the Committee on every one of those amendments. I will not take the time to review them here, but I will certainly answer any questions on them.

Now, the chart on my right illustrates the 1980s have been a remarkable era for railroad safety. Over all, accident rates have declined more than 62 percent in this decade. As the chart illustrates, that carries across every category in which we keep statistics. 1986 was no exception to the trend. In fact, now that we have the final numbers, which I did not have a year ago, as the chart on my right illustrates, reportable accidents fell more than 20 percent below the previous record year of 1985.

What is particularly satisfying to me, workplace injuries for railroad employees were cut by nearly one-quarter in a single year. All of these numbers represent the lowest rates we have ever tallied in the years we have been keeping statistics. There was one category in which numbers did increase. The number of on-duty fatalities went up from 23 in 1985 to 27 in 1986, largely as a consequence of some human performance accidents which I will talk more about in a moment. That is still half the number of 1984 and one-third as many as we had in 1980.

So there has been progress, Mr. Chairman; but behind those numbers showing aggregate process is a developing problem, and the amendments we have submitted to this Committee are designed to deal with it preemptively rather than to let it get worse.

As accident rates have fallen, we have noticed that the pattern of causation in railroad accidents has gradually shifted. Equipment-related accidents such as track and wheel failures which we can reach with our inspections have declined sharply, 70 percent in a decade; but at the same time, human performance accidents have become an increasing percentage of all accidents and a dominant cause of the truly serious accidents.

That has never been more apparent than it was in the first two months of 1987, for which we now have complete statistics. Let me put them up.

As the chart on my right indicates, even with the severe accident at Chase, MD, the industry's overall accident rate continued to decline sharply during the first two months of this year. Reportable

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accidents are down a little more than 5 percent. Although it is not shown on the chart, we now have grade crossing numbers. They were down 9 percent, and employee workplace injuries are down 19 percent.

The problem with these numbers is illustrated by the chart. The totality of that improvement has come in track, equipment and operating practices. Human factor accidents actually went up in the first quarter of this year—and we will take a brief time out.

Senator DANFORTH. Thank you.

[Brief recess.]

Senator EXON [presiding]. The subcommittee will come to order. We apologize for the interruption of the vote. We will now resume, and I will call the Honorable John Riley, the Administrator of the Federal Railroad Administration.

Welcome, Mr. Riley and Mr. Walsh and your other associate. We ask that you please proceed.

Mr. RILEY. Thank you very much, Mr. Chairman. I will only backtrack for about 20 seconds to bring you up to date on the context of the point I was beginning to make.

I am not going to go back over all the data I had at the last session on our inspections and our game plans and things of that nature. I am going to address three points: where we stand today in railroad safety, which will include final numbers for last year which I did not have at our last hearing; secondly, I want to talk about our proposal for jurisdiction over employees; finally, I will make a general overview on the labor amendments. As you know, I filed a specific statement with the committee on each amendment. Because of the length of time, I will not go through those, but I would be glad to answer any questions you have.

Now, as I said before, the 1980s, this decade, has been one of remarkable improvement in railroad safety across the board. As the chart on my right illustrates, the accident rate in this industry has been cut by more than 60 percent in this decade, and that improvement tracks across every single category in which we keep statistics.

Now, 1986 was no exception to the trend. I did not have these numbers the last time I was here, but we do have final numbers for 1986 now. The accident rate was cut another 20 percent in 1986, to the lowest level that has ever been recorded. I am particularly pleased to note that workplace injuries were cut by one-quarter in a single year. I am very pleased with that progress.

There is only one category in which numbers did not decline. Onduty fatalities went up from 23 in 1985 to 27 in 1986, largely as a result of a couple of human performance accidents that I will talk about in a minute. That is still half the level they were at in 1984 and one-third the level that they were at in 1980.

Now, Mr. Chairman, behind these numbers lie a problem, and that is what I want to talk to the committee about today. As we have observed the fall in these accident rates, we have also observed a progressive shift in the patterns of accident causation. Accidents that relate to equipment failure, track/wheel failures, have declined dramatically. These are the kind we can reach with our inspections and with our enforcement program.

But what we have observed is that, while these are declining, human performance accidents have become an increasing percentage of all accidents and a dominant cause of the really serious ones. That has never been more apparent than it was in the first 2 months of this year which we now have final numbers for, and let me share them with you. These have not been previously released. We have literally just gotten all of the numbers in this week. There is a 90-day reporting lag.

Even with the severe accident at Chase, Maryland, the industry's overall accident rate went down about 5 percent from the comparable period last year. While it is not shown on the charts, grade crossing accidents are down 9 percent and workplace injury is down 19 percent. I am afraid, Mr. Chairman, what that chart illustrates is all of the improvement has come on the track, equipment, signal, wheel, operating practice side. Human performance accidents actually increased in the first quarter of this year.

Consistent with our past history, virtually all of the really serious accidents were human performance. We had 19 fatalities in the first quarter. Every one of those 19 fatalities occurred in a human performance accident, which tends to be more serious.

The bottom line is that we are now past the era where we can promote these dramatic improvements in railroad safety with a few extra track inspections or a few extra dollars in making up for deferred maintenance. The challenges we are going to have to meet in the future in dealing with the human performance phenomenon are much more complicated.

Now, at a minimum, they are going to require FRA to make a serious investment in research on human performance causation. We have begun to do it this year. We have three projects going, the most important on dispatching. We are going to need strong cooperation from the labor organizations. I realize it is their absolute obligation to defend their members, but I think they are going to have to soften the traditional position that these accidents do not occur and work with us to come up with some solutions that protect employees' lives. The same is true for railroad companies.

Most important, Mr. Chairman, we are going to need the assistance of the Congress in closing a major loophole in the Railroad Safety Act. I think that most people are shocked to learn that, unlike FAA, FRA safety enforcement authority extends only to railroad companies. The agency has no authority to levy sanctions such as suspension of operating privileges on railroad employees. To say the same thing another way, we literally have jurisdiction over everybody but the people who run the trains. In an era in which human performance has become a dominant factor in serious accidents, that is not an acceptable situation.

Now, this problem should never have arisen. In 1968, the first Secretary of Transportation, Alan Boyd, a Democrat and a fine man that I have worked with for many years, proposed legislation that would have given FRA the same authority that FAA has over both management and employees. FAA received the authority. FRA did not.

Our experience in the succeeding 20 years illustrates the wisdom of Secretary Boyd's approach. At best, it has left FRA entirely dependent upon the willingness of private railroad companies to make our rules meaningful by acting against individuals who violate safety standards.

Now, this is simply wrong from a public accountability standpoint. No public safety agency should ever be forced to delegate its enforcement authority to a private corporation that is not accountable to Congress or to the public.

Moreover, the ability of the railroad companies to act is often restrained—and I see we have another vote—by complex and time-consuming grievance procedures. I understand there is now a four and a half year backlog before the Public Law Boards, which is wrong from a lot of perspectives.

The Federal Aviation Administration, in the face of similar problems, has made effective use of its authority to suspend operating privileges where circumstances justify it. We lack that authority. We lack the deterrent, and it has become a serious impediment to our safety program. It precludes us from even considering issues such as licensing, and it is an obstacle to addressing what I continue to believe is the most serious safety problem we confront today, which is really an epidemic of intentional tampering and disabling of safety devices by a very small percentage of employees, the great majority of whom are very responsible.

Now, I think I have made it clear to the committee that in our judgment the most significant causal factor in the Chase, Maryland accident was the intentional disabling of that safety warning whistle, and it was not an isolated incident. In the last 4 months, we have encountered 69 other cases in which essential safety devices were essentially disabled. Every one of these was a Chase accident waiting to happen.

We are powerless to take enforcement action against any of the individuals involved, and the key, I think, is that also means that the presence of our inspector in the workplace has limited deterrence value because he cannot act in this respect.

Now, we have submitted legislation to this committee which would address the problem by giving FRA exactly the same authority that FAA has, no more and no less. It is a common sense proposal, and it rests on the premise that safety is a shared responsibility between management and labor, between individuals and amorphous corporate entities. A statute granting enforcement authority over half that equation can never be more than half effective.

I really believe that accountability has got to go beyond that amorphous corporate entity down to the individuals who run the trains both in management and labor, just as it does with the FAA and just as it does in the Hazardous Material Transportation Act.

Now, where we have the power to regulate, as those charts illustrate, in areas like track equipment and signals, we have been able to produce spectacular improvement in accident ratios with the cooperation of labor and management. We can produce similar results in the human factor area if we have the authority to act.

Now, Mr. Chairman, our reauthorization proposal contains two other proposals I want to highlight to the committee. We propose to raise the maximum civil penalty on railroads from $2,500 per incident to $10,000 per count per day. We also want the authority to levy a $25,000 punitive assessment for flagrant violation of Federal regulations or a pattern of repeated noncompliance, which is really what triggered this idea in my mind.

While I think the authority will be rarely used, it is a sanction that administrators ought to have, and I am pleased to report to the committee that both management and labor are opposed to the provisions of our bill, and on that basis I commend it to the committee.

The problem we have is, of course, management is all for the position we are taking on the labor amendment, but they do not want to pay higher fines. Labor is all for the higher fines as long as we do not have jurisdiction over them. The point I am making is the program has to be more evenhanded than that, and we are trying to address both sides of the equation.

Now, Mr. Chairman, I want to make some general comments, and if you would give me the license to do this I believe—I know I had this thing down to 10 minutes before, and I think I backtracked over it in catching up.

Senator EXON. Well, you had 10 minutes but this works on 5. Go ahead, Mr. Riley.

Mr. RILEY. Well, I will try to cover it in 2 minutes.

I want to make some general comments on the amendments that RLEA has offered today, and then I will answer questions on the specifics.

For a number of years, the Railroad Safety Act reauthorization has been an inviting target for parties seeking to accomplish economic objectives that are, at best, loosely related to safety. In the last decade, we had to deal with some supply companies which attempted to push amendments that would require their product to be used in particular instances. We have had problems with the industry the same way.

This year it is labor, and from the labor perspective it has meant too often using the Safety Act as a vehicle for job creation by mandating labor-intensive procedures with a loose relation to safety, as a vehicle to accomplish changes in work rules and conditions that were not won at the bargaining table, and as a vehicle to acquire the ability to leverage the Safety Act back against management during labor/management disputes.

Now, unfortunately, Mr. Chairman, nearly all the labor amendments fall in one or another of these categories. Whatever the merits of these causes might be in the abstract—and frankly I agree with some of the labor positions in the abstract. They have no place on the safety bill because once the principle is established that we can use the safety bill to achieve things that are loosely related to safety, we are going to open a Pandora's Box that will never be effectively closed because everyone else is going to try to do the same thing.

Equally important is the fact that these amendments have a clear, definable negative impact on public safety, because as much as we might like it to be otherwise, the amount of dollars available in both the public and the private sector for safety enforcement will always be finite.

The art of the regulatory process is to direct those dollars to the areas that do the most good. To the extent that bad regulatory decisions or amendments of this type shift resources away from the areas of greatest yield and shift them into areas that are more economic than safety or shift them to address the 12th, 13th or 14th highest priority rather than the first or second, we hurt safety in a very real way by shifting priorities from the highest to the lowest, and we misallocate resources.

I also share Jim Burnett's view that, in the railroad industry, safety has become too enmeshed in labor/management disputes. Legislative proposals like the standing proposal that would give one or both of these parties, and they both want it in their own way, greater ability to leverage the Safety Act against the other would inevitably draw safety more deeply into conflict.

Finally, there is a conceptual issue I want to raise in overview to these amendments. The FRA regulatory process provides a vehicle for raising the kinds of issues that labor seeks to raise in these amendments. Parties are authorized to petition us for relief. We open a formal hearing when we are petitioned. We do public hearings if necessary. That is the way it should be done.

Industry and shipper groups have utilized this process to raise countless issues before the agency in my tenure and before. Unfortunately, with few exceptions labor, for reasons that I do not know, has steadfastly refused to utilize the regulatory process and instead has simply bypassed FRA to take their case directly to the Congress on these amendments. We have never had on the great majority of these amendments any kind of rulemaking petition filed. On several of them, we have not even had an informal discussion with FRA on the amendment before it was proposed.

At the very least, parties seeking legislative intervention in the rulemaking process ought to be required to pursue the rulemaking process before seeking to overrule it legislatively.

I have made it plain to RLEA that if they will file petitions on these issues, we will hear them; but I do not think that the Railroad Safety Act ought to be the collective-bargaining table of last resort for either management or labor, and they will both use it that way, given the chance. It should not be used as a vehicle for either party to leverage the other during labor management disputes.

Railroad administrators from both political parties have successfully opposed these tactics and these same amendments for more than a decade, and for the past several years a strong bipartisan block on this committee has taken the lead in rejecting that approach. I am very grateful for that leadership, and I urge the committee to remain firm in it.

If I could add a personal note beyond the prepared text, sometimes you get up before the committee and argue things because they are policy. Sometimes you do it because OMB tells you you had better do it or go back to Minnesota. In this case, having run the safety program longer than anyone else and recognizing this is undoubtedly the last time I will ever be before this Committee on this issue, Mr. Chairman, I feel so strongly that the integrity of the Safety Act has got to be protected from management and labor and, to a lesser extent, suppliers, because all three of them will seek to leverage it given the opportunity.

I am not arguing that the agency is perfect. I am not arguing that it does not make mistakes, but I think the regulatory process must be the first resort. The legislative process should be a second resort used only if the regulatory process fails.

I thank you for your indulgence in giving me that extra couple of minutes. I do appreciate it.

Senator EXON. Mr. Riley, thank you very much. I would hope to keep our hearing going today, despite the possible series of votes, because we have a lot of ground to cover. I will stay as long as I can, although already I am cramped on time to make this vote.

Let me begin my questioning to you in this fashion. I take it that you might agree with the proposal that has been offered by Senator Lautenberg of New Jersey that there should be licensing of at least railroad engineers. Do you agree with that?

Mr. RILEY. Let me give you my view, and it is a little complicated. I will spell it out.

I have committed myself, if we get authority over the employee—and as you know, we cannot do licensing unless we have authority over the employee.

Senator EXON. Sure.

Mr. RILEY. To do a full rulemaking proceeding on licensing. I want to achieve everything that the Senator from New Jersey wants to achieve on licensing.

The one caution I would lay out is that I think you have to distinguish between licensing as the issuance of a piece of paper and licensing as the achievement of the objectives that that paper is designed to achieve.

Now, licensing advocates, and I think the Senator's statement was consistent with this, want to assure several things. They want to insure that qualified people are operating the trains. They want to insure that the operating privilege can be pulled if an individual is not qualified. They want to put a data base together.

Now, I believe that we can achieve the objective of making sure that an operating privilege is pulled where circumstances justify, with authority over the employee without the expedience of going through a paper issuance procedure. I think that can be done directly within due process limits.

As to the data base, I frankly do not know, Mr. Chairman. I would have to hear the testimony at the hearing to determine whether we need the paper process to put the data base together. I would have to listen to that.

As to the national driver register, I absolutely agree with the position the Senator took, and if I have jurisdiction over the employee you will not need to do a rule on that because I will do a rule requiring the employee to turn that information over directly.

Before I get to training, let me make a point. Jim Burnett said on the House side, and I agree with him, that if there is a way to accomplish everything licensing would achieve without issuing the paper, we ought to think about it. I agree with that. It would take me about 1,500 employees to do that paper issuing process. If I had 1,500 employees, I would rather see them out in the field doing inspections; but if it has to be done that way to achieve the objectives we will.

On training, we have not had a human factor accident with an engineer error that involved training deficiencies in the time that I have been at FRA. That is the really curious thing about this. The prototype human factor accident involving an engineer is a highly skilled, highly trained engineer who simply makes a mistake.

Now, what is done in the industry on training? We have some real limitations on our ability with no jurisdiction over the employees, but let me tell you what we do. All of the railroads file their training regimens for engineers with the FRA. We review them. We go back to the carriers and make recommendations. Invariably the carriers have followed our recommendation.

We require the carriers to give proficiency tests to their engineers before they are permitted to operate trains. We require them to keep the records of those proficiency tests. We spotcheck the proficiency tests in progress, and we review the records.

In addition, we have invested in the development of a locomotive simulator out in Chicago that I urge everyone to visit as a training aid to train engineers.

Finally, we have at least two research projects going this year that I have been involved in to study how we can sharpen those training facilities.

It is my view that we do not have a training problem among engineers.

To sum up the whole question on licensing, if we get authority over the employee, I will do a proceeding on licensing. I am committed to achieving every one of the goals that Senator Lautenberg thinks we should achieve. I agree with him. If we can achieve that without issuing pieces of paper, we ought to do it that way and put the money into other safety areas. If we cannot, then we bite the bullet and go to a licensing program. That is my view on that issue, and we will have a full, fair and open hearing on it. I am anxious to do it.

Senator DANFORTH [presiding]. You testified earlier here on the question of drug testing. Since that time have you had an opportunity to reflect on the subject? And could you state your current view on the importance of mandatory random drug testing for safety-related rail employees?

Mr. RILEY. I think my view may be an instructive one, because a year ago I went with a reasonable cause testing program and have come to the belief over the last year that we should expand it.

What I learned was that the reasonable cause testing program is fully effective on alcohol, because alcohol symptoms are readily observable by a trained eye.

On the drug side, we have discovered that even the most educated person, the person with the best training and acuity, cannot detect many of the things that drugs do to the human mind and reflexes that render an engineer unfit to operate.

Again as an example of that, in the crew at Chase, MD, when they came on duty, they were eyeballed by a Conrail manager who had special training in recognizing drug symptoms. They were cleared. An hour and a half later we had a tragic accident.

We found last year that about 3.8 percent of those who undertook post-accident tests in our industry failed the drug test.

That is in fact evidence that even when one attempts to perceive symptoms through a reasonable cause program, some people are going to slide by the board. I am not prepared to say that that is an acceptable level of usage in our industry.

Moreover, there is another problem with the "reasonable cause testing only" solution. Here is what it is. Some railroads will use it. Some will not.

We have several railroad companies that simply will not do reasonable cause testing, period. The advantage you have with random testing is that it ensures the testing is being done everywhere. It is the best way to beat the devices that users use to beat the tests.

It is both broader and narrower than reasonable cause testing. It is broader because it ensures the test will be performed.

It is narrower because it does not grant the authority when there is reasonable suspicion that you have a problem employee to go and test him. You do not want to be restrained by the fact that the grid did not cough out Mr. Walsh's name the day that Mr. Walsh shows up under suspicion.

So I think you need a combination of random and reasonable cause testing, unless we are prepared to accept usage rates in the 2-, 3-, and 4-percent range. And I for one am not.

So I think it is essential that that bill is passed. If that bill does not become law, my successor will be up before this committee in the next Congress bemoaning the fact that we have lost several lives because it did not become law.

Senator DANFORTH. Why do you think that mandatory random testing would reduce drug use by safety-sensitive rail employees?

Mr. RILEY. It is a more effective deterrent. Now, reasonable cause testing is a deterrent, and it has reached a large number of people.

But the problem is that the user believes that he will never give reasonable cause to be tested. And he believes that he will never be unlucky enough to be in an accident and caught by post-accident testing.

Random testing is very different. With a random testing program, the employee, every time he comes on duty, knows that he may in fact be tested. By definition, that is a much broader deterrent than a deterrent which the employee in his own mind can conclude would never apply to him.

I do not think you can underestimate the importance of that factor. I think what we did with the program we implemented a year ago is we got the people who could be deterred by reasonable steps.

But we still have a hardcore group of users, small in number but large in exposure to the public, that we cannot reach unless we can get through to the type of incentives that deter the hardcore confident user. And that is what this bill is all about.

Senator DANFORTH. Of course any time safety rules are adopted, there is a question of attempting to weigh the effectiveness of the rule with the possibility of abuse in violation of civil liberties.

Some have argued that this rule would be abused and that it would be used to discriminate against employees, or that it would invade their privacy. Do you share those concerns?

Mr. RILEY. I think it is an objective fact that a random testing program is less likely to be abused than any other type of testing program. Because a random testing program has to be run off a numbers program that comes out of a random numbers sample from a computer.

It is very difficult, in fact it is virtually impossible, to discriminate in that format. It is always possible under a reasonable cause testing program that an employee will allege, and perhaps with accuracy in some cases, that he has been singled out and tested without adequate reasonable cause.

But under a random testing program, you have absolutely the best guarantee of impartiality, because you have a random numbers program governing the testing.

And it is my hope that labor will shift their position from one of strident opposition to testing to one of negotiating for the interests of their members good rehabilitation programs and good safeguards on testing.

I think that is where labor can play an important role, to really protect the employee. They are not protecting the employee by suing us on the alcohol and drug rule.

Senator DANFORTH. Would the tests be urine tests or blood tests?

Mr. RILEY. I guess, recognizing that we would have to develop a rule through rulemaking hearings in response to the legislation. It would be my inclination to use the same procedure that we have used in our current testing program, to provide a urine test, but to give the employee the option of demanding a blood test.

In that way, you ensure that the most intrusive test would be used only at the employee's request for his own protection. That would be my inclination, subject to testimony at the hearing.

But I have to say, Mr. Chairman, that anybody who did what I did on the night of January 4 and walked across that wreckage at Chase, MD and heard those people, would be very willing to give one urine test or even one blood test.

I am the biggest chicken with a hypodermic you will ever meet. But to give one blood test a year, if it might keep somebody else alive, we ought to do that.

Senator DANFORTH. Right now, are physicals given to rail employees, ever?

Mr. RILEY. Yes, they are.

Senator DANFORTH. How often?

Mr. RILEY. All rail employees take entry physicals when they first go on duty. And we require now, under our rule, that they be drug screened in the course of that physical.

In addition, every employee who is off-duty or furloughed is given an examination when they come back on duty. And the industry is now in the process of implementing an interim physical for people who are on duty over longer period of time, which is a step I think they have needed to take.

You know, when you do one of those physicals, you take a urine test anyway to look for diabetes and other things.

Senator DANFORTH. And a blood test also.

Mr. RILEY. And a blood test also.

Senator DANFORTH. Has anybody to your knowledge ever argued that giving a urine sample or having blood drawn in connection with an ordinary physical is intrusive and a violation of civil liberties?

Mr. RILEY. I have not heard that argument made.

Senator **Danforth**. I have not either. I do not think the argument is that giving urine samples and blood samples is a violation of civil liberties.

I think that the argument is that finding out whether somebody has been using drugs is a violation of civil liberties.

Do you think it is reasonable to provide that safety-related rail employees should be drug-free, or should we permit recreational use of drugs when they are off-duty, so long as their performance is not impaired?

Mr. **Riley**. Well, I think when you say, so long as their performance is not impaired, you get to the gist of the problem.

I think that it is more than reasonable, I think it is something that we ought to do because the operation of a train that carries hazardous materials or human lives is a privilege. It is not a right.

And I think society has a right to put parameters on that privilege, that are designed to protect the public.

Senator **Danforth**. My own view is, and maybe you agree, maybe you disagree, but my own view is that it is perfectly reasonable to provide that people in safety-related jobs should be free of drugs, period. Free. That the drugs do no reside in their system.

Mr. **Riley**. I will give you a personal opinion. And I speak only for myself and not for anybody else. No one has reviewed this statement.

But my view is, at this point there is debate over what the impact of recreational drug use is on the operation of any motor vehicle. And there is a lot about that that we do not know.

While we are in that do-not-know status, we have an absolute obligation to bend every preference toward public safety. And I think that alone justifies the drug-free environment.

This is a very difficult issue. It is one we have all struggled very hard with. But that is my view on it.

Senator **Danforth**. Mr. Chairman, if I could I would like to ask about three more questions.

Senator **Exon**. Go ahead.

Senator **Danforth**. Given the continuing concern about the number of grade crossing accidents, should we not give serious consideration to rail labor's recommendations on signal inspections and testing?

Mr. **Riley**. Let me talk about that at some length. As you can see, there has been a very steady decrease in the number of grade crossing accidents. It is one of the largest single decreases of any of our safety categories.

Now the problem with this signalmen's amendment, this is the prototype example of an amendment that is designed more to create jobs than it is to enhance safety. It has been rejected by administrators of both political parties for the last 14 years.

The reason is because it would establish an expensive labor-intensive inspection program that would have no impact on public safety, and would draw resources away from programs like Operation Lifesaver that do save lives.

Now, number one, I had 2 days of hearings on this. I will give you my reaction to it. And I give the signalmen credit. They did petition us. This is the one amendment that we were petitioned on.

This would be a very expensive program. There are 75,000 active grade crossings in this country, and if we only required one inspection every 6 months, that is 150,000 testing, tear-down and reassembly inspections. A major investment. And it would have no impact on safety.

When the Carter administration rejected this amendment, the Carter administration pulled 22,625 grade crossing accident files to see if there was a maintenance problem.

They could only find three-tenths of 1 percent of the cases in which even an allegation was made that there was some part failure, including the failure of the signal light.

And they concluded that there was not a single one of those cases that would have been avoided by this program. When I first came into this job, the signalmen told me that they had in effect been jobbed by the Carter administration, that it was a rigged study.

I re-ran it. We looked at 21,370 cases. We found 32, that is fifteen one-hundredths of 1 percent in which there was even an allegation made that there had been some form of equipment failure.

And we could not find a single one that we felt would have been prevented by the inspection. But I will tell you what we did find. It is very interesting.

There are two and a half times as many accidents at grade crossings that are turned off for maintenance and testing as there are from alleged equipment failures. You do not address that problem by turning off more grade crossings for testing and reinspection.

This amendment would have a negative impact on public safety, a strongly negative one. Because the railroads put a certain amount of money into grade crossing safety every year.

Right now they do it by installing devices. They do it by supporting Operation Lifesaver. And these are things that really do save lives.

If they have to shift those resources into hiring the people necessary to do this program, you are going to hurt Operation Lifesaver, you are going to slow down the installation of grade crossing devices, siphon funds away from things that really matter.

This amendment, in conclusion, I guess, in the last 12 years, it is a 14-year-old amendment, I believe, 12-year-old amendment. It has been overtaken by technology. Today's signal systems have diagnostic black boxes that self-diagnose and are capable of telling us when there is a problem.

And the State of Texas has come up with the best idea of all. They have an 800 number, posted on every single grade crossing. And if a member of the public sees the grade crossing malfunctioning, they can call the 800 number and an inspector is sent out right away.

And I believe, Mr. Chairman, that is a much more cost-effective approach to this, and it is going to catch problems that an every 6 month inspection would never catch.

You simply cannot set up a program of this magnitude for something that, in the worst case, affects fifteen one-hundredths of 1 percent of the cases. That is my view on it.

Senator DANFORTH. Why are you opposed to giving standing to rail employees?

Mr. RILEY. This is the most important issue in the whole group of amendments, and I know the Chairman was interested. Let me address my view on it. I think it is serious. I do not think it is humorous.

To put this amendment in context, it is essential to recognize that labor does have the right today to sue FRA for emergency relief whenever the health or safety of an employee is in danger.

What they are seeking with this amendment is to expand standing to non-emergency situations where the only issue is how much the company is going to be fined.

Now, the industry has taken the position that they are opposed to that but if labor gets that standing right, they want the same kind of standing once we get jurisdiction over employees on cases where we are acting against an employee.

And if I can use a strong word, that is silly on its face. Nobody could run a safety program that way. Management and labor cannot be granted a signoff right on how much we are going to discipline the other side.

That is just going to convert FRA from a safety agency into one more piece of leverage between labor and management in other areas. And I will offer you two other arguments that I think are compelling on this issue.

First, there is no evidence that FRA is abusing its prosecutorial discretion. We have been sued about two dozen times on this discretion issue by RLEA during my tenure. We have never lost a single suit on it.

Moreover, those numbers are the most eloquent testimony to the effectiveness with which our field inspectors, 99 percent of whom are hired from the ranks of the railroad unions, exercise their day to day discretion.

The second point I want to make is that the same, and this is the most important of all, the same people who write and revise regulations, prosecute violations and collect civil penalties, these same people have to defend the lawsuits that are brought against the agency.

There is a direct hour-for-hour tradeoff between time spent defending lawsuits, which we have never lost, and time spent on safety enforcement. You can justify that tradeoff in an emergency situation, where an employee's health and safety is involved, and they should have that right.

You cannot justify it in a non-emergency situation where the only issue is how much to fine the company. Last year we used 20 percent of our lawyers' time successfully defending a number of lawsuits, many of which were frivolous.

And I have to say, this amendment would increase the number of cases where we could be sued from a few dozen to over 200,000. Management and labor are both very litigious. And the record is replete with cases where they have used the Safety Act to leverage one another in non-safety situations.

I could show it to you on both sides. For the sake of time, I will not go through those examples, although I think they would make good press.

I will submit a written list to the committee, but if you will look at the list what you will see is, I am going to give you a half dozen cases where both sides have attempted to leverage Safety Act penalties against the other to gain an upper hand during a negotiation that had nothing to do with safety. And we just cannot make that worse.

And I have to say that this amendment would end the safety program as we now know it. I could not recommend that the Secretary ask the president to sign a bill with this amendment in it.

It has been rejected for the last 10 years by administrators and Congresses of both parties, and it should be. It should be.

[The following information was subsequently received for the record:]

Examples of Use of the Federal Railroad Safety Program for Non-Safety Purposes

- In 1983 the Carmen filed six lawsuits alleging that FRA's power brake regulations require that only members of that union perform the initial terminal air brake inspection. The union lost or voluntarily dismissed all of those lawsuits. In one case in which the courts reached the merits, the judge concluded:

  > The real gravamen of the lawsuit is that the carmen are not really interested in alleviating safety violations. It is clear that their primary and understandable objective is to be declared the only ones qualified to inspect the air brakes, thus giving them some measure of job security in a depressed industry, particularly where they are in fact being cut out at different locations.

  Bhd. Ry. Carmen v. *Dole*, No. 83-0841-K (CM), Trans. of hrg. on January 30, 1984 at 26 (S.D. Cal.).

- In 1984, the Brotherhood Railway Carmen proposed a statutory amendment that would have mandated that certain work (*e.g.*, initial terminal air brake tests) be reserved for members of that union. That effort was unsuccessful. *See* S. Rep. No. 98-457, 98th Cong., 2d Sess. at 7 (1984).

- In response to FRA's 1985 proposal to amend its rear marker rule (as ultimately adopted in 1986, it permitted a wider population of employees to inspect the device to ensure that the light is working), the RLEA flooded FRA with more than 400 complaints, causing a serious diversion of rail safety resources from productive work. These complaints represented a campaign to keep cabooses -- after rail labor had reached a collective bargaining agreement with the railroads that has permitted their gradual removal under certain circumstances. Pursuant to that agreeement, railroads began to operate many trains without cabooses. However, FRA's rule required that, at crew change points, a "crewmember" was to determine whether the rear end marker was operating. Without a caboose, all crewmembers ride at the front of the train, making a rear-end inspection by a crewmember at a crew change point impractical. Thus, the railroads were using other employees to perform the simple task of determining whether the marker was functioning, causing no diminution in safety. Nevertheless, the RLEA swamped FRA with complaints -- not that the inspections were not being performed, but that "crewmembers" were not doing them. Thus, these complaints were a blatant attempt to use the safety laws for economic ends (more cabooses means more employees).

- For many years the Brotherhood of Railway Signalmen have sought legislation or regulation that would establish a federal rule relating to the maintenance of grade crossing safety devices. Such a rule would, of course, require the employment of many signalmen; however, repeated, detailed FRA examinations of this issue revealed that no safety problem with respect to these devices exists. Accordingly, no federal law or rule is appropriate.

- Numerous non-safety related provisions have found their way into the Hours of Service Act, e.g.:

  - Under the "designated terminal provision," employees must, absent extraordinary circumstances, be housed only at home and away-from-home terminals that have been "designated" for a particular crew assignment, even if suitable facilities for lodging and eating are present at another terminal more convenient for the carrier, and even if that other terminal is "designated" for other crews. Accordingly, a railroad would be in violation of the law for housing a crew even at a luxury hotel for a period in excess of the statutory rest period simply because that hotel was not at a terminal "designated" for that crew. This provision has no relationship to the purpose of the statute: ensuring that rail employees have an opportunity for adequate rest so they can be alert on the job. The statute has the unfortunate effect of drawing FRA into railroad/labor disputes over the use of certain facilities that are fully adequate to meet the safety purposes of the Act.

  - The Act limits dispatchers working in two or three-shift operations to 9-hour tours of duty, but permits those dispatchers working in a one-shift operation to work a 12-hour tour of duty. This statutory provision bears no relation to actual safety issues since one-shift operations are not necessarily less stressful, indeed they can be more stressful, than a two or three-shift operation. The real issues at stake here, of course, are jobs, incomes, and the economics of railroad operations. The inherent safety issues cannot be addressed by FRA since these provisions are embodied in a federal statute.

  - The Act provides for an 8-hour off-duty period. In this case, the railroads and rail labor have collaborated in promoting a system where, by statute, the railroads achieve maximum operational flexibility and the employees are able to maximize their income. Again, since this is statutory law, FRA is unable to subject this important safety issue to the rigors of a rulemaking analysis.

Senator DANFORTH. Thank you.

Senator EXON [presiding]. Thank you, Senator Danforth. Thank you for filling in.

Mr. Riley, I was looking at the charts earlier there and we were talking about from 1983 to 1986 and then 1979 to 1986, the percentage change, what is going on.

What is the frequency of trains traveling on our railroads between 1979 and 1986? I assume they are down.

Mr. RILEY. Frequencies have declined slightly from 1979 to 1986. Hazardous materials movements have increased. Within the overall number there is a mix.

But these numbers, that is a good question, Senator, and I want to emphasize that these numbers are normalized. The reason I use accident rates, rather than gross numbers of accidents, is you are absolutely right.

There is a direct relationship between volume and accidents. And if we just used raw numbers, every time there is a recession we would seem to have a safety improvement. Every time we had a boom it would seem to get worse.

These numbers are normalized by train miles. And that is why the 63 percent figure, which tells you the accident rate reduction, is the true base figure. Other reductions based on the number of accidents, tend to overstate the decrease.

Senator EXON. Is that same theory used on the railroad accidents, January-February 1986 versus 1987?

Mr. RILEY. Yes, it is. Actually, that one, the volumes, were absolutely flat over the last year. So I think the correction there would be very minor.

Senator EXON. There were 422 reportable accidents in 1986 and 400 in 1987, according to your charts.

Mr. RILEY. Reportable accidents and incidents.

Senator EXON. What is that?

Mr. RILEY. Reportable accidents and incidents. Anything that causes more than $5,000 in damages has got to be reported.

Senator EXON. Well, in any event, 1987, reportable accidents, 400. Human factor accidents, 128.

Mr. RILEY. Correct.

Senator EXON. So the ratio is basically 4 to 1. No, it would be 3 to 1, I guess, because total reportable accidents and incidents were 400. Is that correct? And 128 of the 400 were human factor accidents?

Mr. RILEY. That is right. It is about 31 percent. You are correct. It is about 31 percent.

Senator EXON. All right. Of those 300 non-human factor accidents, I am talking round figures now——

Mr. RILEY. Sure.

Senator EXON. What was the reason for most of those accidents?

Mr. RILEY. Well, I can give you a precise breakdown, and if you want to take a minute I can find it here. If not, I can submit it. Your choice.

Senator EXON. No, I am not trying to pin you down. I am trying to make an understanding of this.

Mr. RILEY. OK. Sure.

Senator EXON. It seems to me like you have made quite a big thing out of human factor accidents today. Have you not?

Mr. RILEY. Yes, I have.

Senator EXON. Well, when I see human factor accidents that went from 123 in 1986 to 128 in 1987, that is not a significant change one way or the other. Is it?

Mr. RILEY. Well, I will tell you why I think it is a significant change. The trend line is the key issue.

On all of these other forms of accident causation, the trend line shows that over the last 7 years they have been cut by about 60 percent. The human factor numbers have actually gone up.

So while everything else is going down dramatically, they are going up. And that is what concerns me. It is more the trend than the absolute numbers.

Now the types of accidents reflected in the other end are operating practice, they would be signal failure, they would be track failure, hard couplings, things of that nature. Signal, track, equipment. That is basically the rubric of the others. And operating practice.

An operating practice accident would be one where the operating practice itself was defective, as opposed to one where an error was made.

But what concerned me as I have looked at these trends is that all of those other categories have been moving down so sharply that they are dropping 10, 12 percent a year. The human factor is stable and going up.

And I think to a certain extent that is an indictment of all of us, because we have not caught this trend earlier. We have got to begin to study it and understand it so we can do something with it.

Senator EXON. You indicated in your testimony, Mr. Riley, at least that part of your testimony that I had the privilege of hearing, that the railroad unions very seldom if ever came to your agency for any relief.

There was one case, I guess, that you said that they had. Is that right?

Mr. RILEY. It is seldom. There is only one of the amendments that in toto was presented to us by petition. And that is the signalmen's amendment.

As with the others, there are some subparts of them that were in the early 1970s. But in my tenure, the only one that has been presented by petition is that one.

The only point I am making is, this is something that by the way is not unique to me or unique to Republican administrators. The same thing tracks right through the history of the agency from its inception, and it applies to Republicans and Democrats alike.

And I think it is important to recognize that we need input from labor. The companies will come in and tell us about efficiencies, but they will rarely tell us about safety.

Labor can tell us more about safety than anybody else can. I have been absolutely driven to distraction by the inability to get the relationship established. I have talked to all six of my predecessors from both parties, and they have told me the same thing, that they also could not get it established.

I wish we had a solution to that. It will now fall to my successor to find a way to solve it. But I think there is a historical thing here than goes back beyond any of us. I went back and looked at all the past safety hearings to see how the parties had related in past hearings.

What I found is that each of my six predecessors, Republican and Democrat, were criticized by the RLEA witnesses in almost exactly the same terms. In fact, I brought a list with me today of those quotes, which I will submit for the record.

[The following information was subsequently received for the record:]

RLEA CRITICISMS OF FRA OVER TIME

Over the years, RLEA's allegations against the federal safety program have been so unchanging in their substance and rhetoric that they were once described by a witness as "the rights of Spring." FRA Administrators, regardless of party, philosophy, or the industry's safety record, have been rhetorically castigated for ignoring safety or running paper mache enforcement programs, allegations which were then used by RLEA to advocate its own package of special interest amendments. Here are some examples from the past, and it is remarkable how little the rhetoric changes:

1974—Administrator Hall, Republican/UTU witness J.R. Snyder: "There is very little of a positive nature that can be said about FRA's handling of railroad safety in this country. Something must be done to curb the slaughter and maiming."

1978—Administrator Sullivan, Democrat/UTU witness J.R. Snyder: "The safety picture is the same as it has been for too long a period of time—it is bad * * * Unfortunately, RLEA must now say to FRA—we told you so * * * we've got a serious crisis in this country, with cities being blown up, employees being killed."

1980—Administrator Sullivan, Democrat/UTU witness J.R. Snyder: "It is unnecessary for us to go into great detail concerning the poor safety record of the nation's railroads. As you know, injuries and deaths have been at a totally unacceptable level for too many years * * * As we have told you before, we do not think FRA is doing its job."

1981—Administrator Blanchette, Democrat serving in Republican Administration/UTU attorney Larry Mann: "[FRA] stated that the Federal Railroad Administration's primary concern is that of safety * * * FRA is still not doing its job."

1983—Administrator Blanchette, Democrat serving in Republican Administration/UTU attorney Larry Mann: "* * * this abdication of responsibility has resulted in a substantial increase in injury on the railroads."

1986—Administrator Riley, Republican/Attorney Larry Mann: "It is clear to anyone having knowledge in rail safety that FRA's enforcement is a sham."

Mr. **RILEY**. And you will see almost identical language used against Ace Hall, who was a Republican, Jack Sullivan, who was a liberal Democrat, Bob Blanchette, who was a Democrat serving in a Republican administration, and myself.

In each case, we are accused of running paper mache safety programs, ignoring safety rules. My only comment is, you will have to make your own judgment on each of us. I cannot do that.

But we cannot all be wrong with that kind of consistency. And there is some kind of historical posturing here, where we are in the middle of a labor-management thing somehow.

I have not been able to figure out how to get us out of there. But I hope that somebody does, because the agency needs the input of labor. We really do. We really do.

Senator **EXON**. Do the railroads management come to you? What you are saying is that the railroad management comes to you, but the railroad unions do not.

Mr. **RILEY**. Yes. When I first came in here, we had a little bit of trouble with railroad management who viewed me as a hostile administrator. And I have done my best to be hostile and friendly to everybody.

Senator EXON. You changed that around very dramatically.

Mr. RILEY. I have tried to be hostile and friendly to everyone. But I told our people that you are not doing your job if you have not offended everybody.

But all I am saying is that if you look back through the history of the agency, I do not want to relate this to my tenure, because it is not just me. It goes back 20 years.

You will find that consistently the industry has filed rulemaking petitions. You will find that suppliers have, consistently. You will find that labor on occasion does.

And I do give the signalmen credit. They tried to do it the right way. And I gave them a two day hearing and listened to it.

I have to tell the Chairman I was initially disposed toward that amendment, when I first had it described to me. And that is why I had our people devote the enormous time involved in pulling 21,000 files out to check the accuracy of the allegation.

It was only after doing that that I turned around on it. But that is a fair hearing. And I would like to get them into the process.

Senator EXON. During your earlier testimony, Mr. Riley, I remember you referred to the fact that the people who check the tracks for safety and the condition of tracks actually work for the railroad companies, but they report, what, to your agency?

Mr. RILEY. It is both. What we do, and if I, Joe, depart in any way from literal accuracy, please stop me and correct me.

What we do is that we set up a mandatory inspection program on track for the railroads, that they have to do with their employees. Then our employees go out and by spot checks, periodic inspections, ensure that the railroads are carrying out their part of the program.

We also directly do our own track inspections. The state inspectors do the same, so there are two levels of inspection. Finally, we have isolated a 27,000 mile network where most of the nation's hazardous materials move, and all of the passengers move.

In addition to the other requirements, we require that the railroads inspect that track every three days, and we run an automated geometry car over it so that we get automated track geometry readings on incipient track flaws.

And I think that that is the real reason, the combination of those three things is the reason that we have been able to cut the accident rate by about 75 percent for track. Track is our best performance. Track is where the most has been done.

Senator EXON. I am asking you a question specifically about the employees of a railroad that check tracks. And they make a finding on the condition of the track.

I presume, if they think the track in a certain area is bad, who do they report that to?

Mr. RILEY. They report their findings to the railroad company. Their railroad inspectors are designed to maintain the track to our standards.

Our inspectors inspect it to determine whether they have done that.

Senator EXON. Do you, or members of your agency, have available to you, and do you inspect the reports that the railroad employees report to the railroad on the condition of track?

Mr. RILEY. Yes, we do.

Senator EXON. And do you frequently take action based on that, or do you send your own inspectors out to do a check?

Mr. RILEY. Well, it is really a combination of both. Our first recourse is with our own inspectors.

But particularly when we do company assessments, we take all of their files out and review their files, and if we see patterns appearing in their files, then we go out and look at those areas.

Senator EXON. Do you or members of your agency ever deal directly, or frequently deal directly, with those employees of the railroad that check those tracks?

Mr. RILEY. Yes, we do. Our inspectors in the field deal directly with them.

In fact it has been my practice, incidentally, and Joe, you may be able to expound on this, it has been my practice over the last 3 years that I have been here that we will investigate every instance that anyone calls into us to investigate.

We receive about 1,000 calls a year above and beyond official contacts, where people ask us to go out and look at something. And those at times come from railroad track inspectors who do not believe that the railroad has fixed what they reported.

But Joe, you may want to comment on that.

Mr. WALSH. Also, Mr. Chairman, at the present time we have an ongoing audit, where we are working directly with the track inspector, who is the employee of the railroad, to see if his territory is the right territory, if it is not too long, if he is trained and is knowledgable of our regulations, and if he is inspecting according to the requirements.

Once we complete that audit we plan to go back to each railroad and discuss it with the railroads. And we have been in close contact with the officers of the Brotherhood of Maintenance of Way as to what this program involved and what we are trying to accomplish with it, as well as talking to railroad management.

Senator EXON. So you are testifying that you feel that your agency has a basic program which encourages and works in cooperation with the employees of the railroads who check tracks for their condition and report directly to the railroad.

You think there is a good line of communications between your agency and them, although they do not work for you. Is that right?

Mr. RILEY. I think there is. Obviously, as in any other business where you have got several hundred thousand people involved, I am sure that there are people who are more happy than others, both in our organization and outside it.

But I think that the level of communication, particularly with the track inspectors, is a good one. Because track is very objective. Track inspection is a very objective thing. I mean, there is either a defect or there is not.

There are other areas that are a lot harder, where things are more subjective. And that is operating practices.

Senator EXON. Well, do they not do checks with regard to speed? I mean, a track could be safe at one speed but not at a higher, is that right?

Mr. RILEY. That is absolutely right. The whole system is constructed on that presumption.

We have different track categories established, and we require different standards for different operating speeds. For example, 10 mile an hour track has a set of standards. Twenty-five mile an hour has a set of standards.

We, based on our inspections, will grant the authority to operate at a speed on the track. And then we go back and determine whether or not they are keeping the track up to that level.

But that is exactly right. That is how it is done. And we also try to gauge the speed of trains. You know, it is interesting. One of the issues that came up is, how do you tell whether trains are speeding.

And the answer is, you do it with a radar gun. The same way you do it with a car. We have radar guns, and we send our people out and we literally hide in the bushes and we radar gun them.

I think there is a mistaken impression around that you can track speeding with these recording devices in the trains. That is very hard to do, because what the recording devices do is pick up a lot of pulse elements.

You have to remove them from the train and send them out to a laboratory then to calibrate and analyze, so that by the time that you get the data back, you know, it is a significant amount of time later on.

The basic way we check speed of trains is with radar guns, just the way the state police do.

Senator EXON. Thank you, Mr. Riley. I have no further questions. Senator Kasten, we welcome you and I think Senator Danforth has very well covered the matter of alcohol and drugs. I have touched some on general safety.

Please proceed in any fashion that you care to, Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you very much. After our hearing in February, looking into the Chase, MD accident and touching on some general rail safety matters, I am pleased that we have got these witnesses here today and I thank and congratulate you for the hearings.

When we go back to that set of hearings and the information that we gathered, one of the most disturbing issues to me was the question, and then it turned out the vast amount of tampering with, I think I characterized it as sabotaging, safety devices that was going on within the locomotive and within the trains.

I contrasted this with the airline industry, for example, where the crew's and even the system's focus seems to be safety first, and that kind of overriding of the safety devices was practically unheard of in airplanes.

I was shocked that even after the FRA had let it be known that they were doing inspections, they still found a large number of tamperings rendering safety equipment useless.

After the tragic accident at Chase, instead of being shocked, which I think they ought to have been, by defeated safety devices and learning from that accident, our information was that some crews went on with that pattern not only in disregard to their passengers' lives, but in disregard to even their own safety.

With this kind of evidence, I not only understand but want Mr. Chairman to support Mr. Riley's request for authority to sanction individual employees for safety violations.

And I wanted to just ask Mr. Riley, you remember the questions that we went through, about the evidence. There was a photograph that you showed of a wrench being jammed on an accelerator device, I believe, and there was also broad discussion of taping of whistles and other kinds of things.

Could you tell the committee where we are now with this whole set of questions and problems. What is the situation today with regard to overriding or tampering with or sabotaging safety devices which are on the train?

Have there been any instances in the last couple of months that would indicate to me that there is a dramatic change and that this is stopping? Have you been able to change some of the devices to make them harder to tamper with, or is there a different attitude among the crews and the overall atmosphere within the train has changed?

Mr. RILEY. I continue to believe that it is a very small percentage of railroad employees who do this. Most of the employees are very responsible and very concerned.

Unfortunately, I have now, since our last hearing, written 69 additional citations for equipment tampering against railroad companies.

And I do write the citation against the railroad company because it is all I can do, and because I want to make sure that they continue to do everything that they can do to combat this.

But every one of those is a Chase accident waiting to happen. I do not think there is any question about it. It is unfortunate. But the real problem with lack of jurisdiction, if I can spin off on that from this question, is that it takes the deterrence away from our inspector in the workplace.

We had an amazing case, it is the only one I have seen like it, but that is why I brought that picture up here, where one of our inspectors was in the train and the tampering was done so blatantly that it was done right in front of him. We just took a picture of it.

I think that illustrates how little deterrent value an inspector who can not act against an employee can have. I do not think the majority of employees do this. I think very few of them do.

But it only takes one to kill. And that is the problem.

Senator KASTEN. You said that you had had 69 different new violations. Is that right?

Mr. RILEY. That is correct.

Senator KASTEN. Is that what you call them, warnings? Over what period of time are we talking about? I can not remember. Was it March or April that you were here last?

Mr. RILEY. I think we are talking something like, I would like to say broadly the last 4 months.

But let me also say that while we have looked for these, we have not done the kind of intensive dragnet for them that we did back in the middle of January, because what we can do about it is so limited.

Senator KASTEN. But you are saying, then, that you are talking about an ongoing basis of several incidents each week.

Mr. RILEY. It is going on. Yes. That is correct.

Senator KASTEN. In which we are seeing sabotaging of safety devices taking place on railroads in the United States. Is this the northeast corridor only, or is this throughout the country?

Mr. RILEY. No. What we did was we have been ticketing them on trains across the whole country, but basically on the Amtrak lines. Where we have been looking for them is on the Amtrak lines.

And I have to tell you that I do not think this begins to measure what has happened on the freight lines, because we have not been pushing for them on the freight lines.

And it encompasses every type of equipment. We found warning whistles taped. We found electronic alerters taped. We found automatic train-stopping equipment cut out. We found dead man controls cut out. It is a serious problem.

Senator KASTEN. Well, are you telling us then that you as the administrator are unable to deal with this problem, within present law?

Mr. RILEY. I cannot adequately deal with it. I can fine the railroad companies.

Senator KASTEN. I mean, this is crazy. We have seen a major accident. We have got evidence of safety devices being sabotaged. You are supposed to be in charge of it.

And you say that it is happening several times a week over the past few months after we have given as much effort as we can from our side in terms of trying to focus congressional attention on the problem of sabotaging safety devices on Amtrak railroads.

I mean, this is just absolutely nuts.

Mr. RILEY. I associate myself in every way with your comments.

Senator KASTEN. What happens with these 69? Do the companies say they can do nothing, or do the employees deny that they are doing it, or do you have unfair or inaccurate evidence? What is the problem?

Mr. RILEY. No; the evidence is good in all cases. I think at times it is difficult pinning down who actually did the taping.

In other cases, when you do know it, and there are a lot of those, we found that, what we do is we turn the employee over the company and we have to rely on the company to exact discipline if it chooses to do so.

But one of the problems is that the grievance procedures are such that there is now a 4-and-a-half year backlog before the public law boards, and about a year-and-a-half process to get to them.

That is bad from my perspective, because what it means is that the company's disciplinary process does not have deterrence. And frankly, it is bad from the labor perspective, because the truth of the matter is no railroad employee ought to have to wait 4 and a half years to have his claim heard. That is just wrong.

Senator KASTEN. Well, what about a railroad passenger who is getting on a train today at the station, in which he can not be sure whether or not the safety devices have been sabotaged?

The evidence that we are getting in the hearing today is that he has got a fair chance, if he is traveling that corridor, that the safety devices on the train that he is on have been or are being sabotaged. This is crazy.

Mr. RILEY. I cannot offer him that assurance. The trains are inspected before they leave the station. But I have to tell you, that very little of the sabotaging is done in front of the company's inspector. It just is not done.

And I certainly, anyone who thinks that an employee is going to state on his licensing application, yes, I tape whistles, that is not going to happen. I mean, what has got to happen here is that we have got to give the railroad inspector in the workplace real deterrence.

Two things we need. We need the ability of that inspector to recommend an operating suspension for an employee who is caught taping a whistle or disconnecting a safety device.

That will only happen once or twice and that will put an end to this. I mean, once one or two Federal inspectors in a red-handed case, subject to due process, have suspended the operating privileges of a couple of people who do it, that will be the end of it.

The second thing that we need is the strong support of the employee organizations, because they can do so much on the peer environment. That is really the solution to this. It really is the solution.

Senator KASTEN. My time has expired, but Mr. Chairman, I think that we all have a responsibility. I do not know what the answer is, but the situation is, after all of the time and attention that you and others of us have put on this question, that this whole operation still continues, business as usual, with sabotaging and overriding of safety devices. It just is absolutely unacceptable, and we have to figure out a way to do it.

I wanted to make one other statement. The question of automatic train controls and their use, particularly in the Northeast corridor, was discussed in our hearings previously, too. Some concerns were expressed concerning their use on freight trains.

Now, Secretary Dole has set in motion the mandatory use of these ATC devices on all trains using the Northeast corridor, apparently feeling that the technology can be adopted to freights as well.

My understanding is that the comment period is just starting. The Chase accident could have been prevented if the Conrail locomotive had been so equipped according to my understanding.

Are you part of this whole effort toward putting these automatic devices on the trains, including the freight trains in the corridor, or is this being done in conjunction with your agency?

Mr. RILEY. Yes. Obviously, it is an FRA order. After that accident took place, I pulled the file on the automatic train control that FRA had out, and I read it cover to cover. The decision was made in 1982 before I got there. What I found out was that NTSB and FRA had both originally recommended it. In 1982 NTSB changed their position and said that they thought Amtrak's operating procedures were an effective alternative, and my agency did the same thing.

Frankly, they were both wrong, and I think that when an agency is wrong we ought to just plain admit it. ATC should have been put on that train. Would it have avoided this accident? I do not know. There are ways that it could have and ways that it would not have, but it would have made it less likely to happen, in fairness.

We in January began to do simulation, computer simulation work to determine how that system would have to be adapted to make it work on a freight train. In fact, I can tell you I worked on that from the first week we were up here in January all the way through until the date of the announcement. We have developed specifications for the reprogramming of that system which will work on freight trains.

We are giving a public comment period, as we have to under the Administrative Procedure Act, 30 days comment, but I do not believe anyone will be able to seriously question the changes we have made in the equipment. It will work.

I want to add one thing on your other question. Some of the employees have said to me that management allows them to go out with disabled or defective safety devices or tells them to do it against their will. I want to add that my criticism here is a criticism of operating a train without its safety device. If we have the kind of authority that we want and we catch a management official who has ordered an employee to operate an unsafe train, he is going to get exactly the same treatment because the point here is to protect the public.

It is not a labor/management thing. It is a thing of individuals, because I think that labor and management have a commitment to stop this. We want to go in and help them. That is what we want to do.

Senator Kasten. I hope that the questions that have come to you do not imply—we have to solve the problem, and I do not care if it is labor, management, labor and management, whatever, but it is absolutely crazy to see this going on week after week after week after week, endangering lives, including the lives of the people who are doing the sabotaging.

Mr. Riley. I think we also need to redesign some of these systems to make it harder and to take away the incentives. I think the new ATCS which is being developed in cooperation by a number of railroad companies is going to be essentially a tamperproof system, and I think ATCS will ultimately be coast to coast on all railroads in this country. That will be the ultimate solution to it.

Senator Exon. Thank you.

Thank you, Senator Kasten.

Just one followup question and then we will excuse you because we are way behind.

Railroad management today has a responsibility, do they not, to make sure that horns are not taped over and some of the safety devices that they build into their locomotives are not sabotaged by crews? What kind of a job is the railroad management doing to see that horns are not taped over and the like, in your opinion?

Mr. Riley. You are absolutely right. They have that responsibility, and I have commenced 69 civil actions against them in the last four months to remind them of that fact.

I think they were doing a generally moderate to inadequate job of this about 5 months ago. I think that they have awakened. Frankly, so were we, because we did not realize it was as big a problem as it was. I will indict us along with the companies. I think that just as we have come to realize it is a big problem, they have, too, and I think today they are doing a good job on it. Five months ago they were doing a poor job on it.

Senator Exon. You think they are doing a good job on it today?

Mr. Riley. Today; with some exceptions, but generally today.

Senator Exon. Gentlemen, thank you very much. We appreciate very much your coming here and testifying this afternoon.

[The statement follows:]

STATEMENT OF HON. JOHN H. RILEY, ADMINISTRATOR, FRA

The 1980's have been an era of remarkable improvement in railroad safety. Since 1979: accident rates have declined 62.8 percent; track and equipment related accidents have declined 75.2 percent; workplace injuries have declined 66.5 percent; on-duty fatalities have declined 43.6 percent; and grade-crossing accidents have declined 48.9 percent.

No other mode of transportation even approaches the magnitude of this.

It has been a constant one, year-by-year, through the decade, and 1986 was no exception.

Last year, reportable accidents fell 20 percent below the record year of 1985. Track related accidents declined 20.5 percent, equipment accidents 22.5 percent, and grade-crossing accidents 7.6 percent. Employee workplace injuries declined 24.9 percent, and grade-crossing injuries fell 8.5 percent. In one important category, statistics did not improve—employee fatalities associated with train movements, where there were 27 in 1986 compared to 23 in 1985. This is still, however, a substantial improvement over 42 in 1984, and 77 in the last pre-Stagger's year.

This improvement was not a matter of chance. Although this Committee will undoubtedly hear railroad labor and railroad management attack one another—and the Federal Railroad Administration—in the course of this afternoon's testimony, the fact is that both labor and management have contributed substantially to this improvement with a renewed commitment to safety in their daily operations. An increasingly effective FRA safety program, coupled with improvements to the industry's cash flow resulting from the Staggers Act, played an equally significant role. Behind overall improvement in accident statistics, however, lies a developing problem. And that problem points very clearly to what we must do, as an industry, if we are to keep accident rates moving downward in the years ahead.

As accident rates have fallen, the pattern of causation in railroad accidents has gradually shifted. Equipment related accidents, such as track and wheel failures, have declined sharply. These accidents, the type we can reach most effectively with our ongoing inspection program, have fallen more than 70 percent in the 1980's. At the same time, human performance accidents have become an increasing percentage of all accidents, and a dominant cause of the truly serious incidents. That problem has never been more apparent than it was in the first 2 months of 1987.

Even with the severe accident at Chase, Maryland, the industry's overall accident rate continued to decline sharply during the first two months of this year.[1] Reportable accidents are down 5.21 percent from the comparable period during the record year of 1986. Grade-crossing accidents are down 8.9 percent, employee injuries are down 19.8 percent, and total accident/incidents are down 16.3 percent. But as the following graphic illustrates, while tracks and equipment accidents continued their downward trend, human factor accidents actually increased. And consistent with our experience in recent years, virtually all of the serious accidents appear to be human error cases—they accounted for all of the 19 fatalities suffered during the period.

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[1] Accident data for the first 60 days of 1987 is now complete; data for subsequent months is not yet available.

CHART A.—RAILROAD ACCIDENTS—JANUARY/FEBRUARY 1986 VERSUS 1987

	1986	1987	Percentage of change
Total reportable accidents	422	400	−5.2
Human factor accidents	123	28	+4.0

The bottom line is that we are now past the era in which we can generate dramatic improvements in safety performance with a few more track inspections, or the investment of a few more dollars in eliminating deferred maintenance. The challenges of the future are far more complex. If we are going to keep the accident rate moving downward, we need to develop mechanisms to deal with the complex issues that arise from human performance accidents.

That will certainly require a serious research investment to analyze the causes of human factor accidents—an effort we commenced with the initiation of our dispatcher project in February.

And while I recognize the clear obligation of the employee organizations to defend their members in individual cases, labor will have to soften its traditional posture of denying that employee error is a significant factor in accident causation. Much human error is not error at all, but international action—such as the intentional disabling of train safety devices at Chase, Maryland, and in 68 other cases so far this year. It will be difficult to reach this portion of the human performance problem without a strong cooperative effort among employees, management and federal safety officials. We need the help of the labor organizations building peer attitudes that work against these kinds of actions.

Perhaps most important, however, we will need the assistance of the Congress in closing a major loophole in the Railroad Safety Act.

Most people are shocked to learn that unlike FAA, FRA's safety enforcement authority extends only to railroad companies. The Agency has no clear authority to levy sanctions—such as suspension of operating privileges—on railroad employees. To say the same thing more directly, we literally have enforcement authority over everyone except the people who actually run the trains. And that is not an acceptable situation in an industry where human performance has become the dominant factor in the truly serious accidents.

This situation should never have arisen. In 1968, the first Secretary of Transportation, Alan S. Boyd, proposed legislation that would have given FRA the same enforcement authority FAA possesses over the persons and institutions responsible for the safe operation of trains, be they railroads, railroad officials or railroad employees. FAA received the authority; FRA did not. And the Department's experience in administering the Rail Safety program since then has confirmed the wisdom of the approach advocated by Secretary Boyd.

In some instances, the Alcohol and Drug Rule for example, we have attempted to reach individual conduct through the "backdoor" by requiring companies to place conduct restrictions on the employees. Whether this rule will survive judicial scrutiny remains to be seen. At best, however, this is a backdoor approach to regulation, the best we could do under our current authority. And it leaves FRA entirely dependent on each company's willingness (and ability) to make our rules meaningful deterrents by acting against individuals violating federal safety standards.

This is simply wrong from a public accountability standpoint. FRA should not be forced to delegate its enforcement authority to private corporations that are not accountable to the Congress or the public for administering the Rail Safety Act. Moreover, the ability of railroad companies to act is often restrained by complex and time-consuming grievance procedures, procedures which often take 2 to 4 years to resolve a single case. The Federal Aviation Administration has made effective use of its authority to suspend the certification of aviation personnel where circumstances justify suspension. We lack that authority, and we lack that deterrent. It has become a serious impediment to our efforts in combatting human factor accidents.

At a minimum, this limitation draws into serious question our ability and authority to pursue employee licensing programs. The lack of clear authority to proceed directly against an offending employee, through license suspension, for example, could be a practical barrier to an effective licensing program even if we concluded the concept had merit from a safety policy perspective.

This lack of authority also stands as an obstacle to addressing what may be the most serious safety problem now confronting this industry—the tampering and disabling of safety devices by operating employees.

The intentional disabling of a safety warning device was, in FRA's opinion, the most significant causal factor of the Chase, Maryland accident. It was not an isolated incident. Over the past 4 months, FRA inspectors have encountered 69 cases in which essential safety devices were intentionally disabled. Each of these was a Chase accident waiting to happen. We are powerless to take enforcement action against any of the individuals involved, which also means that the presence of our inspectors in the workplace have limited deterrence value.

This is an extremely serious problem. The best safety devices we can design will have little impact if they are disabled by the very people they are designed to protect—railroad employees. But our ability to deal with this issue is materially impaired by the fact that we can take no direct action against the small minority of employees who engage in this practice, even if we catch them in the act.

We have submitted legislation to this Committee which would address the problem by giving FRA the same enforcement authority over railroad employees that it now possesses with regard to railroad companies. It is a common sense proposal, one that would equate FRA's authority with that now possessed by the FAA, and with the authority granted under the Hazardous Materials Transportation Act.

The proposal rests on the premise—and the simple fact—that safety is a shared responsibility between management and labor, between individuals and corporate entities. A statute granting enforcement authority over half that equation can never be more than half effective. Accountability must extend beyond the amorphous corporate entity to the individuals who run the railroads, both in management and labor, as it does in the FAA and under existing hazardous materials statutes. We owe it to the public to demand accountability from individuals and institutions, from labor and management alike.

Where FRA has had the power to regulate, in areas like track, equipment and signals, spectacular improvement in accident ratios have resulted. We can produce similar results in the human factor area if we have the authority to act.

The Department's Safety Act Reauthorization contains such authority, seeks new user fee authority, and requests two other important improvements in existing law.

The first would increase FRA's maximum civil penalty authority. That authority has not increased since 1970. Our proposal would more than compensate for inflation by increasing the limit fourfold to $10,000 per count.

The second proposal would grant FRA discretion, vested in the Administrator, to levy a $25,000 punitive assessment for flagrant violation of federal regulations, or a pattern of repeated noncompliance with federal directives. While this authority would rarely be used, it is a sanction Administrators should have to deal with the exceptional case where conventional remedies fail to gain cooperation of responsible railroad officials.

We believe these procedural amendments will materially enhance our ability to maintain, over the next 3 years, the kind of progress that has characterized railroad safety throughout the 80's. We ask your help in that effort.

Finally, and perhaps most important, I want to commend this Committee for taking the leadership role in keeping the Safety Act Reauthorization free from amendments that mix collective bargaining issues and safety—and by doing so, divert scarce resources from areas of high safety impact to areas of low cost benefit. In 1983 and again last year, this Committee took the position that it would rather have no safety authorization than a bill encumbered with amendments of this nature. It was a courageous position, and it was the right position. I supported it last year, and will do the same in the 100th Congress.

For a number of years, the Railroad Safety Act Reauthorization has been an inviting target for parties seeking to accomplish economic objectives that are at best loosely related to safety. For some supply companies, that has meant a temptation to promote legislation (or regulations) requiring installation of their particular products. For labor, it has too often meant an effort to use the Safety Act: as a vehicle for job creation by mandating labor intensive procedures, as a vehicle to acquire the ability the leverage Safety Act procedures against management during labor-management disputes, and as a vehicle to accomplish changes in work rules and conditions that could not be won at the collective bargaining table.

Whatever the merits of these causes might be in the abstract, they have no place in the safety bill. Once the principle is established that the safety regulatory process can be used as a vehicle to accomplish these types of objectives, we will have opened a Pandora's box that will prove very difficult to close as management, suppliers and other unions adopt the same tactic.

Equally important is the fact that these amendments have a clear, definable and negative impact on public safety. As much as we might like it to be otherwise, the dollars available for safety enhancement in both the public and private sector will always be finite. And regulations issued under the Railroad Safety Act have a significant bearing on how those resources are allocated. The real art of the regulatory process lies in steering these finite safety resources to the areas where they will have the greatest impact on public safety. To the extent that Congress and FRA steer those resources away from the most effective public safety uses to support objectives that are less effective, or primarily economic, safety suffers. To the extent we pursue the tenth, twelfth, or fifteenth most important safety issues at the expense of the first and second, we misallocate limited resources to the detriment of public safety. Unfortunately, virtually all of the RLEA amendments fall in one or another of these categories. Specific comments on each of those amendments have been filed with this testimony, and I urge the Committee to study those comments carefully.

Moreover, I share NTSB Chairman Jim Burnett's view, that in the railroad industry, safety issues are already too deeply enmeshed in labor-management conflict. Legislative proposals (such as the Universal Standing Amendment) that would give one or both of these parties greater power to leverage the Safety Act against the other would inevitably draw safety even more deeply into the arena of labor-management conflict, at the public's expense.

There is a third conceptual issue relevant to most of these amendments. The FRA regulatory process provides a vehicle for raising the types of regulatory issues labor seeks to raise in connection with the Safety Act Reauthorization. Parties are authorized to petition FRA for rulemakings, and it is our practice to initiate formal inquiries with or without public hearings to assess the merits of each petition. Both the industry and shipper groups have utilized this process to raise their issues of concern. Labor, with few exceptions, has steadfastly refused to utilize the regulatory process, choosing instead to bypass FRA and go directly to Congress for legislative relief. No petitions have ever been filed on issues such as dispatcher work standards and regulation of off-track motor vehicles. On several of the proposed amendments—such as bridge walkways and vehicle standards—RLEA had never even discussed the issues with this Administrator, formally or informally, before requesting legislative action. At the very least, parties seeking legislative intervention in the rulemaking process should be required to pursue the remedies available in that process before requesting legislative relief.

The Railroad Safety Act should not be the collective bargaining table of last resort for either management or labor. And it should not be used as a vehicle for either party to leverage the other during the ongoing labor-management negotiating process. Federal Railroad Administrators from both political parties have successfully opposed these tactics—and these amendments—for nearly a decade. And for the past several years, a strong bipartisan block on this Committee has protected the integrity of the Railroad Safety Act by rejecting the same amendments that have been offered again this year. We are grateful for that leadership, and urge the Committee to remain firm in its commitment in the year ahead.

[The following information was subsequently received for the record:]

National Railroad Passenger Corporation,
Washington, DC, August 3, 1987.

Hon. Ernest F. Hollings,
U.S. Senate, Russell Senate Office, Washington, DC.

Dear Senator Hollings: Amtrak is concerned by some misstatements made during John Riley's testimony at the June 2 Railroad Safety Reauthorization hearing in the Subcommittee on Surface Transportation, as well as by news reports which followed based on those misstatements (see enclosures).

Mr. Riley reported, in response to questions by Senator Kasten regarding "sabotaging" of locomotive warning devices, that the FRA had "found 68 incidents" of tampering in the four months since it began inspecting for such violations. The majority of these violations, he stated, involved Amtrak.

In total, the Federal Railroad Administration looked at 18 different railroads, examined 4,251 locomotives and found 69 violations.

In fact, only six of those instances involved Amtrak employees, and all of these occurred on freight railroads outside the Northeast Corridor in January or February, shortly after Amtrak had taken over employment of the particular engine employees. Enclosed is a brief description of each of the violations.

Although such alleged violations are very disturbing to Amtrak and warrant disciplinary action against the employees involved, six incidents cannot reasonably be considered the majority of 69. Amtrak's foremost concern in operating our passenger rail service is the safety of our passengers, and it is vital to us that the traveling public know of and believe in our safety record.

At this point, it is difficult to erase from public perception the damage already done by these reports. However, I would like to clarify the facts of the situation for you and the Committee, and to request that the printed record of the hearing be corrected in the text or clarified in a footnote.

I will appreciate any assistance you can provide in resolving this unfortunate situation.

Sincerely,

T.J. GILLESPIE, JR.,
Assistant Vice President, Government and Public Affairs.

CASE NO. ATK 87-3(LI), LOCOMOTIVE INSPECTION ACT

CLAIM NO. 1

Date: 1-29-87.
Time: 10:00 a.m.
Location: Los Angeles.
Locomotive No.: 237.
Alleged Violation: Inbound Train Inspection—Alertor inoperative; circuit breaker in down or off position. Air cock to magnet valve was cut out. Daily Inspection Report showed Alertor was cut out at Albuquerque and Needles. No non-compliance locomotive tag applied as required.
Person Notified: C.E. Arnett.
T&E Crew Takeover Date: Zone 12, L.A. to Needles, 11-5-86; Zone 11, Needles to LaJunta, 7-87; Zone 8, Chicago to LaJunta, 2-18-87.

CLAIM NO. 2

Date: 2-6-87.
Time: 7:25 a.m.
Location: Los Angeles.
Locomotive No.: 214.
Train No.: 3.
Alleged Violation: Inbound Train Inspection—Alertor light and siren inoperative; circuit breaker in down or off position. No non-compliance locomotive tag.
Person Notified: C.E. Arnett.
T&E Crew Takeover Date: Zone 12, L.A. to Needles, 11-5-86; Zone 11, Needles to LaJunta, 7-87; Zone 8, Chicago to LaJunta, 2-18-87.

CLAIM NO. 3

Date: 2-9-87.
Time: 1:52 p.m.
Location: New Orleans—Track No. 1.
Locomotive No.: NOUPT-3 (Switcher).
Train No.: N/A.
Alleged Violation: Safety control foot pedal device blocked down with a 12" journal bearing.
Person Notified: J. Pearson.
Follow-up Action: Foot pedal removed. Switcher not required to have a dead man pedal device.

CLAIM NO. 4

Date: 2-12-87.
Time: 7:19 a.m.
Location: Los Angeles.
Locomotive No.: 232.
Train No.: 3.
Alleged Violation: Inbound Train Inspection—Alertor system inoperative; circuit breaker in down or off position. Air Cock to magnetic valve cut out. No non-compliance locomotive tag applied.
Person Notified: M. Campbell.

T&E Crew Takeover Date: Zone 12, L.A. to Needles, 11-5-86; Zone 11, Needles to LaJunta, 7-87; Zone 8, Chicago to LaJunta, 2-18-87.

CASE NO. ATK 87-4(SI), SIGNAL INSPECTION ACT

CLAIM NO. 1

Date: 2-12-87.
Location: Fredericksburg, VA.
Locomotive No.: 274.
Train No.: 94.
Alleged Violation: Speed control cut-out switch was not sealed.
Person Notified: Train Engineer.
T&E Crew Takeover Date: 8-20-86.

CLAIM NO. 2

Date: 2-12-87.
Time: 4:55 p.m.
Location: LAUPT—L.A., CA.
Locomotive No.: 221.
Train No.: 580.
Alleged Violation: On outbound inspection audible warning device on Auto Train stop was too soft to be heard.
Person Notified: J. Tursi.
T&E Crew Takeover Date: 11-5-86.

[From the New York Times, June 3, 1987]

TRAIN INSPECTORS FIND TAMPERING OF SAFETY DEVICES

WASHINGTON, June 2 (AP).—Railroad workers have purposely jammed safety devices on trains at least 68 times since a fatal train collision near Baltimore in January, the head of the Federal Railroad Administration said today.

Federal inspectors have discovered 68 instances in which whistles, electronic warning devices and other equipment that automatically stops trains were intentionally disabled, John H. Riley, the Federal Railroad Administrator, told a Senate subcommittee.

Investigators have concluded that a whistle designed to sound when safe speeds were being exceeded had been taped over in one of the three Conrail freight locomotives that smashed into an Amtrak passenger train in Chase, Md., on Jan. 4. Sixteen people were killed and 175 were injured in the crash.

"ACCIDENT WAITING TO HAPPEN"

In the subsequent investigation, Mr. Riley said his agency's inspectors had found most of the tampering on Amtrak trains, where they conducted most of their examinations.

"I don't think this begins to measure what's happening on freight trains," he said.

"Each of these was a Chase accident waiting to happen," Mr. Riley told senators on the surface transportation subcommittee of the Commerce, Science and Transportation Committee.

After his testimony, Mr. Riley said none of the reported tampering incidents resulted in an accident. He said he believed the warning devices were being jammed because train workers considered them to be a nuisance.

ACTION AGAINST WORKERS

"I think we have people here who don't want any restrictions," he said. "I think we have a cowboy mentality out there among a few people."

J.R. Snyder, legislative chairman of the Railway Labor Executives Association, an umbrella group for the nation's railroad unions, said he would ask the subcommittee to provide him with details of the agency's inspections.

Mr. Riley testified that to stop the incidents, the Government needs the authority to take action against railway workers. Currently, the law only permits his agency to take action against railroad companies, with a maximum fine of $2,500 per violation.

But Mr. Snyder told a reporter, "If an engineer or any other crew member tampers with a safety device, the carriers should immediately take them out of service."

[From the Associated Press]

RAIL WORKERS JAMMING SAFETY DEVICES

Railroad workers have purposely jammed safety devices on trains at least 68 times since January's fatal Amtrak-Conrail collision near Baltimore, the head of the Federal Railroad Administration said yesterday.

Federal inspectors have discovered instances in which the intentional disabling of warning whistles, electronic alerting devices and equipment that automatically stops trains, FRA Administrator John H. Riley told the Senate surface transportation subcommittee. None of the reported tampering incidents resulted in an accident.

Riley said his agency's inspectors have found most of the tampering on Amtrak passenger trains, where they have run most of their tests.

Senator EXON. I am going to move now to a panel of out-of-town visitors that have inconvenienced themselves to come in at our request for this hearing, so I will call at this time Panel 2, which includes, and you gentlemen please come forward, Mr. Spencer Morrissey, the Brotherhood of Maintenance of Way Employees from Tecumseh, NE; Mr. Jeff Minton, Brotherhood of Locomotive Engineers from Langhorne, PA; Mr. Ray Wolf, United Transportation Union from Savannah, GA; Mr. Lewis F. Parker, Brotherhood of Railroad Signalmen from Winfield, MO; and Mr. Michael L. Crawford, Brotherhood of Railway and Airline Clerks from Baltimore, MD.

Gentlemen, would you please take seats at the table?

As I said in my opening remarks, gentlemen, I know each of you have come some distance in many cases to be here at this hearing. We appreciate very much your coming and upsetting your otherwise more routine schedule.

We will start out this afternoon on the right side with Mr. Spencer Morrissey, Brotherhood of Maintenance and Way Employees from Tecumseh, NE, who is seated on my right to the extreme left of the table and follow right on down the line. Mr. Crawford will be next. We will go right on down the line.

So Mr. Morrissey, I appreciate very much your coming in, and would you please proceed with your testimony at this time?

STATEMENTS OF SPENCER MORRISSEY, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, TECUMSEH, NE; MICHAEL L. CRAWFORD, BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS; MIKE BANNISTER, SOUTHERN PACIFIC RAILROAD; RAY WOLF, UNITED TRANSPORTATION UNION, SAVANNAH, GA; LEWIS F. PARKER, BROTHERHOOD OF RAILROAD SIGNALMEN, WINFIELD, MO; JEFF J. MINTON, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, LANGHORNE, PA; AND ERIC McKEOWN, TRAIN DISPATCHER, CONRAIL

Mr. MORRISSEY. I have some testimony here to enter into the record.

Senator EXON. The full testimony that you have just presented will be incorporated in the record without objection.

Mr. **Morrissey**. Then, sir, I have some photographs that I am going to cover just a little bit that are to be entered into the record, too.[1]

Senator **Exon**. We will accept those as part of the record. Mr. Morrissey, do you have those photos so that you will have a copy of them, and could I have a copy of them up here, also? Do you just have one set?

Mr. **Morrissey**. These are for you to keep, yes, for the Committee to keep.

Senator **Exon**. You are going to talk about those as part of your testimony that you are about to give?

Mr. **Morrissey**. It is in my written testimony, and I will just slightly cover it in mine.

Senator **Exon**. After you have slightly covered them, would you bring them up to me so that I can have a look at them so I can hopefully understand what he is talking about?

Mr. **Morrissey**. I do have one problem. I gave you my copy of my testimony.

Senator **Exon**. We all have that trouble from time to time, Mr. Morrissey. We give away everything.

Mr. **Morrissey**. Mr. Chairman, as stated my name is Spencer Morrissey. I started working for the Burlington Northern in 1973. In 1974 I started out as a track inspector and have worked as a section foreman, roadmaster and track inspector since that time.

Presently, I am the track inspector from Lincoln, NE to Tablerock, NE, which is a portion of one of the heaviest tonnage rail corridors in the world. I am here today to talk about a few of the problems that I see in rail safety affecting maintenance of way workers, track workers and the public in general.

My craft, the maintenance of way, is one of the most dangerous rail crafts there is. I think it is the most dangerous rail craft. We had 74,229 accidents from 1980 to 1985. We got these figures from the Association of American Railroads. Those figures are more than any other craft. This does not include some figures from the Burlington Northern, as they were discovered to be deficient in their reporting of their accidents by the FRA. They were found to be in widespread violation of reportings, and so these probably are not reflected in these figures or possibly in Mr. Riley's charts.

One of the problems with that is there is a lack of Federal regulations covering the maintenance of way personnel. They may cover trainmen or signalmen or something, but they do not relate to the maintenance of way people.

We have had many problems working on bridges. We have had many employees killed after unsafe situations had been reported to the railroads; no safety nets, people consequently fall off. We had three people killed last year, and we had people hit by trains from walking across bridges at night that had no walkways or no railings. Many times this is after we have already issued a safety complaint to the railroads.

Now, Mr. Riley does not seem to want to have control of that, but he is worried about losing one more life and putting more controls on drug and alcohol, but he does not really want to have control of this. That is what concerns me. I feel that if not the FRA, someone has to be in control of preventing these accidents.

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[1] The submissions were not reproductible and are in the Committee files.

Now, we have conditions out there where we have our campcars, where our mobile gangs live right beside the tracks, and these are just disasters waiting to happen because we will have 40 to 60 men sleeping in bunk cars next to a main line. The trains are going by at 59 miles an hour, and their bunks are actually 3 to 4 feet from the side of the engine and the loaded boxcars as they go by. We are talking about 200 million pounds of coal train coming by at 59 and 60 miles an hour less than 4 feet away from these people.

We are speaking of having bright, attentive, and alert employees free of drug and alcohol in the workplace, but yet we have these people that cannot sleep all night because of noise and possible fear of I do not know what. I have slept there, and I would like all of you to try it, sleeping in a bunk car next to the main line. No one seems to want to do anything about this.

We brought this up to the Burlington Northern. We tried to slow the trains down. Can we slow them down to, say, 25 miles an hour? They stated we are in the business of moving trains from point A to point B as fast as we can, and we will not slow down trains by campcars.

It is the same way with the bridges. We complained about that, and they did nothing about it. People were killed. They still did nothing about it. More people were injured, and in some instances it is still going on.

We have a lot of things like vehicle rules that are not enforced. We have to ride around in shabby old vehicles that possibly cannot pass safety inspections, and we just feel kind of hampered and helpless in how we can get this stuff covered. No one seems to want to take on responsibility. We petition the company, and all they do is just kind of turn a deaf ear towards us.

So if it is not the FRA that is going to take over, I do not know who will. I feel Mr. Riley is kind of out of touch with his people in the field. I do not know, possibly spending too much time with his charts and personally pulling the files. I think the people in the field are a little disgruntled. They seem to have the same feeling we do, and we are going up against the railroad.

I attended a recent meeting with FRA people, and they seemed to feel intimidated if they had any rules or suggestions that they wanted changed. They brought up many rules on hazardous materials that needed, definitely needed to be changed, and the harassment. I, myself, as a track inspector have been harassed for enforcing Federal regulations.

Senator EXON. Harassed by whom?

Mr. MORRISSEY. By my immediate supervisors on the railroad. I would put a slow order on a piece of track that called for 10 miles an hour train per FRA regulations, and they would come up and put one spot up to 25 and one up to normal speed without even repairing them. The second location that they put up to normal speed remained that way for 26 days, and then they repaired it, and on the 27th day the FRA man came through and inspected it.

Now, we asked the FRA what we could do, and they said, well, you tell us about it and we will come out and you give us a statement, a signed statement against the railroad, and I think we can do something about it. They said I think we can do something about it. They were not even sure of that.

We had instances in Lincoln, NE We had a headon crash where they called it a fiasco, a complete safety fiasco. Poor dispatching practices, but yet they were helpless. There was nothing they could do, and the regional people are getting kind of disgusted. They are short on manpower. They are short on money, and they, like I say, feel helpless. They do not know what they can do to resolve some of these problems.

As far as the harassment, if you are harassed and you call the FRA and tell them about it, well, they will show up the next day or the day after that, and they will call the railroad and tell them they are coming. Well, they are not going to harass you then, and they will not admit to harassing you.

But I have in my written testimony quite a bit of documentation of harassment I have received and some documentation of harassment of train crews we see being forced to leave the North Platte, NE yards with defective trains. In some cases the tires were slashed on a trainman, and in one case a man's life was threatened over the phone anonymously.

It is a problem out there, and we just need some help to get some of this stuff covered. I feel some of the RELA's recommendations are very good. I think, as Mr. Riley says, if he does not think that they should handle them, all I can say is who should? If it is so important that we save one more life by checking for drug and alcohol, and I am all for eliminating drug and alcohol in the workplace, why is it not important to avoid disasters with people getting hit by trains on bridges with no walkways? Why is it not important for me to not be harassed when I am trying to enforce safety regulations that protect my family living near the railroad tracks, myself and the general public?

If it is important in one aspect, if we are going to look at rail safety, let us look at the entire rail safety picture and not just drug and alcohol. That is my main opinion.

[The statement follows:]

STATEMENT OF SPENCER MORRISSEY

Mr. Chairman, my name is Spencer Morrissey. I started working for the Burlington Northern in 1973. In 1974 I started as track inspector and have worked as section foreman, roadmaster, and track inspector since that time. I am presently the track inspector from Lincoln, Nebraska, to Table Rock, Nebraska, a section of one of the heaviest tonnage rail corridors in the world. I am also the Maintenance of Way State Legislative Director of Nebraska.

I am here today to speak about a problem that I feel has existed in my industry since I first started on the railroad. The problem is threefold:

1. The railroad's attitude toward the Federal Railroad Administration and the enforcement of the regulations.
2. Harassment of employees enforcing FRA track regulations.
3. Lack of safety rules covering Maintenance of Way personnel and the Federal Railroad Administration's regional office questions of their authority and ability to enforce existing rules.

When the F.R.A. inspects the Burlington Northern's track, they are always escorted by a company official, usually a roadmaster. It is well known in my area that the roadmaster's job is to talk the inspector out of writing up violations. This, of course, is not a written rule, but as an ex-roadmaster, I know that is what is expected. On March 5, 1986, my roadmaster couldn't ride with the F.R.A. inspector, so he assigned me to go with him. The F.R.A. inspector reported only one major defect in 110 miles, a defective frog. I called my roadmaster to report the defect, and he told me to "talk him out of it". I told him I wouldn't do that, and he became angry with me. The next day he informed me that he would never again send me with an F.R.A. inspector because "I would have talked him out of that defect, I guarantee it."

On March 4, 1987, I attended a foremen's meeting in Lincoln, Nebraska. At this meeting we were told F.R.A. regulations were a minimum standard and that there existed a set of Burlington Northern standards that were far more restrictive than the F.R.A.'s. We were then schooled in these standards by General Roadmaster M.A. Oliver and told that we must live by them. As the class went on, we found that we had to live by these rules only if it wouldn't cost money. We were told that the ballast standards could not be maintained because it would be "financially prohibitive." We were then advised that the standards relating to cutting rail into the track in cold weather should be followed "only if it didn't involve excessive train delay". These are both standards designed to prevent sun kinks or track buckles, a major cause of derailments. During this meeting, I asked what we were to do if we were told by a roadmaster to do something unsafe, like violate an F.R.A. regulation. My question was answered by assistant superintendent of maintenance of way, William Johnson. He told me, "You better do what you're told and complain about it later." This type of attitude was the cause of a 23-car derailment at Exeter, Nebraska, three weeks before this when a track foreman was forced to remove a slow order against his will.

The first week in April General Roadmaster Oliver conducted classes with the track welders. These welders are covered by the same F.R.A. track standards as the foremen and track inspectors. One standard, 213.137 (B) states, "If a frog point is chipped, broken or worn more than five-eighths inch down and six inches back, operating speed over that frog may not be more than ten miles per hour." The welders had questions about slowing down trains when they cut out chunks larger than that calling for the 10-mile-per-hour speed. This happens daily with them as they cut out cracked spots before welding. They were told that they didn't have to slow down trains, that F.R.A. Standards didn't apply to a piece of rail intentionally cut out as opposed to the same size piece that breaks out (which would require a slow order per F.R.A. rules). See exhibit A. Mr. Oliver also stated that F.R.A. regulations were way too restrictive and that if any of the welders had trouble with the F.R.A. to let him know. He would contact Overland Park (Kansas, corporate headquarters for track standards) and let them handle the F.R.A.

As a track inspector, I find this all very confusing. My supervisor will tell me to enforce the F.R.A. regulations, but when I do, the pressure starts. It ranges from subtle pressure to out-and-out harassment. On June 4, 1986, my roadmaster cussed and harassed me for refusing to remove a slow order. On February 21, 1987, he again tried to get me to remove three slow orders that were in direct violation of F.R.A. regulations. On March 19, 1987, a roadmaster pressured me to remove a slow order I had just put on. I refused and told him he could remove it if he wanted. He declined. He then followed me for the rest of the day staying about ¼ mile behind me on the track. On March 26, 1987, I put the speed on two switches down to 10 mph. My roadmaster took both of the slow orders off, without any remedial action being taken. One of these defective switches remained in service at normal speed for 25 days. It was finally repaired the day before the F.R.A. inspector came through. Again I would like to emphasize that all of these slow orders were placed per F.R.A. Standards, right by the book. The man who held this track inspection job before me was so intimidated by the roadmaster that he simply refused to put on a slow order. Any time I refuse to remove a slow order, even though it is in violation of F.R.A. standards, I am opening myself up for discipline on insubordination charges.

F.R.A. standards are minimum safety requirements, not intended to be used as a guide for maintaining a safe railroad system. Because of cutbacks in forces in recent years, I cannot get basic maintenance work done. I make lists of work to do daily, but for the most part, it is never done until the track exceeds F.R.A. standards. Refer to exhibit B. These conditions were first reported on November 19, 1986.

On March 5 and 6, 1987, I attended a meeting in Kansas City, Missouri, with the regional director of the F.R.A. and his staff. I came away from this meeting with the feeling that the F.R.A. regional people were frustrated with their attempts to enforce the rules and change them as they saw fit.

When I told Mr. Tom Paton, director of F.R.A. region 6, of problems with my supervisor pressuring me and removing slow orders without fixing them, he stated, "We know that's a situation, and it's no different than the poor old car inspector that's intimidated by the foreman not to bad order cars, or the same as a machinist that signs off on the inspection when he knew it was defective; it happens industry-wide."

On discussing a Head-on collision that happened at Lincoln, Nebraska, Mr. Paton said, "We had quite a little conversation with (superintendent) Zimmerman in Lincoln in regard to that whole fiasco in Lincoln. We felt their operating procedure of one dispatcher not walking two desks away to let the other dispatcher know that the switch engine was out there, and all the time they knew that the inbound train was on short time. It was just a total fiasco and we did have quite a little conversation with the B.N. about that, and I don't know that we even swayed their opinion at all, but we still think it was a sloppy operation." This situation still exists, on a route on which nuclear waste is hauled.

We then discussed hazardous materials with regional specialist Billy Steele. Mr. Steele commented in discussing the reporting of hazardous material violations. "If there is a situation out there that an employee knows for a fact is a violation of Federal sections, a lot of times they'll be hesitant to turn it in based on the fact that they'll have to testify to that. And if he's the only one who saw it, he's not about to testify against the carrier."

We also discussed hazardous material derailments and placarding of dangerous cars. Mr. Steele stated, "Still the No. 1 concern is trailers on flat cars and containers on flat cars. I cant tell you what the regulations say about the documentation they are required to have on them, but the fact remains that they're shipping intermodal containers, trailers on flat cars and you're not getting the documentation. You're going to get freight of all kinds, miscellaneous freight and I'll guarantee you, you can have anything in there. June and July when the fireworks are starting to come in from overseas, and you can have explosives A, B, and C, loaded in these and they can say anything on the signs. But they're dangerous. It's hard to go back to Hong Kong or someplace where they originate and you're going to be out there with a piece of paper that says 'Miscellaneous Freight'. So if you're ever involved with trailers on flat cars or containers on flat cars, treat it as though it could have something (hazardous material) in it. Regardless of what it says on the weighbill. There's no guarantee they are placarded correctly."

Mr. Steele also commented that hazardous material cars are protected with blue flag while they are unloading but the same protection isn't afforded by the regulations when the car is being loaded. They have had hazardous material spills as a result of this poorly written rule. Another gap in the rules is that after the elimination of weight cars, Hazardous material cars can now be placed on the end of trains. This would have a disasterous result if a rear end collision occurred.

Mr. Paton also reported that Burlington Northern had been found guilty of "widespread violation" concerning reporting of personal injuries. When asked what had been done, what sort of fine had been imposed, Mr. Paton indicated that they were too short of manpower and money to do anything about it.

These and many more concerns were brought up by all the F.R.A. specialists, concerning needed regulation changes. When a legislative director of the B.L.E. asked if he could do anything to help, Mr. Paton replied, "that would have to be between you and me. I'm not independently wealthy, I still need a job."

The Maintenance of Way is the most dangerous craft in the railroad industry. Yet, they have very few regulations covering their work. Following are some examples of the lack of safety rules to provide Maintenance of Way personnel with a safe working environment.

1. *Safety surrounding bridges.*—Many of the bridges in the railroad systems cross not only large bodies of water but also expressways, turnpikes, and busy city streets. Many carriers have rules covering this dangerous work, including my employer, the Burlington Northern. Unfortunately, as is the case with the B.N. often these rules are not followed. As recently as two weeks ago, between McCook and Binkleman, NE, a Colorado Division steel gang was forced to work over four bridges, from 75 to 150 feet high without the required safety nets, belts, or cables. This was done under protest, we requested that the B.N. follow their own rules and provide the equipment. Our protests were met with silence, and the unsafe practices continued.

Luckily, nothing of consequence happened in this instance. Unfortunately the same cannot be said for other cases. In the summer of 1986 the Brotherhood of Maintenance of Way petitioned Conrail to provide safety equipment for their track and bridge personnel. Conrail also refused. Then in July of 1986 a bridge foreman fell to his death in Pittsburgh, Pa. Still the nets and other equipment were not provided. Two months later another Conrail employe fell off the Sound Shore bridge in Bayway, N.J. Another employe had to leap into the water to save this man's life. If the tide had been out, he would have fallen to his death.

Many bridges do not have walkways and handrails. In the normal course of our work, we walk along side of worktrains unloading ballast, ties, and other track material. As we do this we must constantly be aware of bridges or trestles as well as all the other safety aspects relating to working with a moving train unloading material. More than once I have looked up at the last minute and have had to jump onto the side of a car to avoid falling off a bridge. Trainmen are also very vulnerable to this hazard as they walk their trains at night.

2. *Motor vehicles used to transport railroad employes.* In some instances safety precautions in this area are nonexistent. Our people are forced to ride in the rear of trucks and busses with flammable materials or unsecured tools. In many cases the vehicles do not meet, and in many cases escape the vehicular standards set by State law. Last Spring, my crew was riding in a truck with doors welded shut, improper ventilation, leaky exhaust and poor tires. The front suspension and steering mechanism was in an extremely poor state of repair, and the truck was difficult to control safely. The hydraulic dump box had to be operated from underneath the running truck with an employee laying on his back operating the controls right at the transmission. When I wrote this up as a safety hazard, my superior told me he wasn't about to spend any money on that truck. Six months later this same truck was still being used without any of the requested repairs performed.

3. *On-track equipment should not be insulated.*—This would activate signal and crossing apparatus. Our track machinery and hi-rail vehicles are presently insulated. This means that the dispatcher, trains, and auto's at highway crossings are not aware of our presence. Our dispatchers are presently so overloaded with work that it would be easy for them to overlook some of our personnel. The railroads are currently talking about increasing dispatcher work load. Non-insulated equipment would help prevent a dispatcher or trackman's oversight from becoming a disaster. Last week between Halpin and Melrose, Iowa three pieces of track machinery were destroyed when they were struck by a train. Had the three men operating these machines not reacted quickly, they could have been killed or severely injured. Here, non-insulated machinery could have prevented this. It would provide a safeguard, warning the trains and reminding the dispatchers that track equipment was in the area.

4. *Working on or next to "live" tracks.*—Many times in the yards our people are working in a humping area using very noisy power equipment. Because of the noise, our people are not aware of rail cars rolling on adjacent tracks. This has resulted in some horrible accidents and still there are no regulations to help alleviate this situation. The same problems exist on the mainline where there is double main track. Again our people are working with hearing protection because of the noise level of their equipment. Because of this they cannot hear the whistles of trains approaching at full speed. The nature of our work causes us to stand "foul" of the second main track, putting us in a very undesirable situation. We must have standardized blocking and slow order regulations to protect us in these situations.

5. *Working and living away from home.*—The living conditions in some of the camp cars I have lived in has been deplorable. While these conditions are improving on many railroads they do still exist. In 1983 my work gang's assigned campcars were put on a storage track next to a packing plant. The kitchen and dining cars were less than 200 feet from the kill room. Needless to say, the odor and environment were extremely distasteful. Maintenance Of Way personnel should come under the same rules that protect the standard of living of other railway crafts.

Another more dangerous aspect of this problem is the placement of campcars next to mainline tracks. Blue flag protection (preventing the use of that section of track) must be provided in addition to locking the occupied track at both ends. In 1981, while the campcars were in Bluehill, NE, they were inadvertently hit at twenty miles per hour by a switch engine. Because everyone was asleep in their bunks, no serious injuries occurred. The placement of these cars on tracks adjacent to mainlines is a very serious problem. The outer walls of these cars are sometimes no more than three feet from the sides of engines and freight or coal cars moving past at 59 miles per hour. The Burlington Northern has flatly refused our requests to slow down trains past campcars. Their replay was "We are in the business of moving trains as fast as possible, no slow order will be placed for campcars." I would challenge anyone to get a good nights sleep with 20 million pounds of coal train roaring by as often as 15 times nightly, just three to four feet from your bunk. If we want to address the problem of alert, attentive employes working on the tracks this is an issue that should be considered. More importantly, if we want to avoid a major rail disaster, these cars should be located a safe and reasonable distance from mainline track and hazardous materials.

There is a need for a change—a need to review attitudes and procedures. There is a dire need to promulgate safety rules and regulations to protect Maintenance of Way personnel in their very hazardous work. For the railroads to think they can intimidate the FRA is wrong. The FRA must have the authority to enforce and improve their regulations. The railroads attitude of, "lets do it until we get caught," must be eliminated. When the railroads are caught violating Federal Regulations, they must be aware that they will be held responsible for their actions. For a railworker to have to worry about his job, to worry about supporting his family, simply because he is enforcing Federal Regulations is unconscionable. When the railroads start sacrificing the safety of their workers and risking the health and well-being of millions of people living along rail lines simply to save money, it is time to take a long, hard look at what's going on.

Senator EXON. Thank you very much.

I understand there are some pictures in your testimony. Would you briefly tell us what those pictures show?

Mr. MORRISSEY. That was just on the living conditions. The track gangs, aside from living right next to high speed trains, the conditions that they are living in are deplorable.

The large set of pictures are the "before" pictures with the CS&X Railroad, and we issued complaints, and the smaller pictures are, unfortunately, the "after" pictures. You will see there is just no difference, and in some cases they are worse. We get a lot of lipservice but we have not been able to get a lot of action.

Senator EXON. Have railroad workers always lived under the conditions that you have testified to and under the conditions that I see in reviewing these pictures?

Mr. MORRISSEY. Well, I have only worked for 13 years, but I am sure they probably were worse at one time. We have some older pictures that we thought were too old to submit that are just worse than these. I have lived in these bunk cars, and, yes, these conditions still exist. It has kind of always been that way, as far as what the oldtimers tell me.

Senator EXON. Are there other places that these trains could be parked so the sleeping employee would not be as close to the track? Are these trains always parked right next to a main line?

Mr. MORRISSEY. In all of my experiences, they are always parked right next to the main line. It is the most convenient for the railroads. See these places for them to put their power poles up? There are old sidings that they used to use and do not anymore. For them to get away from the main line, they are going to have to possibly change their entire system of bunking their traveling employees.

Senator EXON. Thank you very much, Mr. Morrissey.

Mr. Crawford.

Mr. CRAWFORD. Yes, Mr. Chairman. I have a statement plus several supporting documents [1] for my statement, and I have enough copies for the Committee.

Senator EXON. We will accept those without objection to be part of the record.

If you could please summarize.

Mr. CRAWFORD. My name is Michael L. Crawford. I am employed by the CSX Corp. I am a carman welder currently employed at the carrier's Baltimore, MD facility.

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[1] The documents were not reproducible and are in the Committee files.

I have completed a 732 day apprenticeship-type program and have held the position of carman inspector. My knowledge of events within CSX's other facilities is augmented by the fact that I am Vice General Chairman of the Brotherhood Railway Carmen—excuse me. We have recently merged within the year and it is tough to keep our name straight—augmented by the fact that I am Vice General Chairman of the Baltimore and Ohio Joint Protective Board, Brotherhood Railway and Airline Clerks Carmen Division.

Chief among my complaints of the carrier safety programs is the fact that they are not allowing the persons trained and qualified to perform air tests. Those qualified persons are the carmen. We build, maintain, dismantle and rebuild all types of railroad cars. The carmen are the only persons on the railroad who understand the intricacies of an air brake system. The carmen construct the component parts of an air brake system as well as performing periodic and emergency repairs to the overall air brake system.

CSX has provided training to the carmen through videos, slides, instructions, testing and, more importantly, through hands-on experience as well as keeping us informed of any changes in the Federal power brake laws.

My point is that carmen have been furloughed in all locations. The inspections and air tests have been left to the operating crews who have not been trained nor are they qualified to perform the work.

The carmen have been furloughed at Hagerstown, MD, leaving only two car inspectors on the daylight shift. CSX has rescheduled its trains to arrive between the hours of 7:00 p.m. and 7:00 a.m. when no carmen are available.

Part of the documents I wish to submit today involve the transfer of cars from Mount Holly Springs, PA to Hancock, WV. This is a series of correspondence which was initiated by myself and further handled through the general vice president and national legislative representative of our organization and ultimately investigated by the FRA.

The FRA findings in this particular case were that several unannounced inspections and train brake test observations were conducted during their investigation. In two instances, evidence of noncompliance was noted when the operating crews failed to perform proper air tests at Hagerstown, MD and Hancock, WV.

Further, CSX has furloughed all but one car inspector at Martinsburg, West Virginia. This carman is on the daylight shift. The trains departing after 3:00 p.m. receive an inferior, at best, air test. CSX knows the inferior air tests are being performed, if they are performed at all.

The same situation exists at Wilmington, DE, where the railroad is ordering carmen off of tracks or has failed to assign carmen to tracks because of the amount of time it takes to properly inspect and perform proper air brake tests.

CSX would rather save time and money than safeguard the communities and lives which they serve. CSX has even admitted that they have assigned the air tests at Wilmington to train crews even though a carman is available.

The railroads discourage the two-sided inspection of rail cars which transport trailers and tri-level automobile carriers. It is very essential that both sides of a train carrying tractor-trailer loads and other automobiles be inspected on both sides because of the construction and design of the cars which prohibits observation of all air brakes on only one side.

At midnight tonight another inspector position in Baltimore, MD will be abolished, leaving one inspector at this facility. This lone inspector is also responsible for servicing a trailer ramp along with his other duties of repair. This lone inspector will at times become too busy to be in two places at one time, and the air test will in all likelihood be performed improperly by unqualified train crews.

This situation occurs at other points in Baltimore, MD, at Locust Point and Bayview Yard, Baltimore, MD, where the train crews have been instructed to give their own air tests even while carmen are on duty.

The phrase often heard around the car department is the carrier has a safety program when you became injured, and then they look for a rule that you violated. Rather than continue with an ongoing safety program in depth, in comprehensive, they would rather assess the liability.

CSX constantly violates the Federal power brake laws through these actions. The Presidential Emergency Board Number 211 in 1986 recognized the carman as the most qualified person to conduct air tests and inspections, and I request this honorable committee to follow suit.

Additionally, I have correspondence from John Zuckman directed to Mr. C.M. McIntosh, Administrator of Railway Labor Executive Association.

This is a copy of a letter addressed to Senators Heinz and Specter and a congressman in the western part of Pennsylvania. This letter involves a recent accident on April 11 in Bloomfield, Pennsylvania and a CSX derailment in Confluence, Somerset County, PA. This accident involved——

Senator EXON. Mr. Crawford, I do not mean to rush you, but we have only so much time, and we have a whole group of other witnesses here. Now, your time is up. We have accepted your full testimony. We are very much interested in this kind of testimony, but we can only absorb so much at one time.

Now, are you in a position where you can kind of wind this down so we can move to the other members so they can all have a chance?

Mr. CRAWFORD. Yes, I will wrap it up very quickly.

My point on this document is that it is a condition within all the railroads, not just CSX, that the train inspections and air tests are being given to crafts who are not qualified to perform the same.

Senator EXON. Thank you very much, Mr. Crawford.

Please identify yourself when you start your testimony. I am also going to take these pictures that I have received of the living conditions of the people out in Nebraska, which is pretty shocking to me.

I would like to have you all take a look at this and see if this is just the situation in Nebraska or whether this is typical.

Mr. MORRISSEY. Those are not from Nebraska, sir. One of them is from Florida and——

Senator **Exon**. Where are they from, Mr. Morrissey? You presented them to me.

Mr. **Morrissey**. The small bundle is from Florida, and the large bundle is, I cannot remember. I have got it written down. I can look it up here and let you know. I can not remember where the large bundle is from.

Senator **Exon**. None of these are from Nebraska?

Mr. **Morrissey**. No, sir.

Senator **Exon**. How are your conditions in Nebraska? Pretty good?

Mr. **Morrissey**. They are not as bad as that, but everything else is pretty comparable. Yes. I would not call them good. No. I would not say they are good.

Senator **Exon**. Do you think these are typical, Mr. Morrissey, or are these the worst case scenario?

Mr. **Morrissey**. No, they are not the worst case scenario. But I would not say they are typical either. But there are people living in these bunk cars like this.

Senator **Exon**. Well, gentlemen, I am going to hand these to you. I mean, I would ask you to make it very clear in your testimony.

I do not think that you misled me, Mr. Morrissey, but I jumped to the conclusion that these were from Nebraska. Do you have any pictures like this from Nebraska?

Mr. **Morrissey**. No. But I could. If you would like me to, I could.

Senator **Exon**. Well, I am particularly interested, as a Senator from Nebraska, as to what the conditions are in Nebraska.

Although that does not mean that I am not interested in elsewhere. But I just want to make sure that we have a balanced approach here. We insist on balanced approach from both management of railroads and railroad unions.

We do not like to be caught here as representatives of the public at large between management and labor. But we always are and we always will be. I just simply want to say that I want to make certain that we are getting representative material.

So I am going to ask the rest of you to look at these pictures and see if you think they are typical or not. So you can look at them as the others are testifying. Mr. Bannister, we will go to you now.

Mr. **Bannister**. My name is Mike Bannister, local chairman, legislative representative of 1561, California.

I was requested by the UTU in October of 1985 to attend the FRA hearings with regard to power brake rear-end marking devices, and blue flag law.

At the time of my appearance in Washington, D.C., after the first morning session, I was approached by a Mr. Mike Star and Ken Miller of the Southern Pacific Transportation Company, and informed that if I kept on testifying, that I would not make the merger.

Senator **Exon**. Let me interrupt you a moment. Those buzzers are buzzing again. And when they buzzed I could not hear.

I thought you said something that led me to believe maybe you were possibly threatened with testimony here. So, tell me if I heard that correctly. Back up a little bit, so I can catch this. Will you?

Mr. **Bannister**. OK, sir. I was told after the first morning session at the FRA building in the FRA hearings——

Senator Exon. When?

Mr. Bannister. In October 1985.

Senator Exon. October 1985.

Mr. Bannister. When I testified before the FRA, that if I continued, now this is after the morning session, if I continued to testify, that I would not make the merger.

I took that as an open threat. I went back up and I talked to Mr. Larry Mann about my position as far as an employee for the Southern Pacific Railroad is concerned. And he told me not to worry about it. And I went on about my business.

I returned to the property line in Bakersfield, CA. I was told by several officials, including the superintendent and road foreman, that if I continue to turn in hours of service violations, like we were doing, that I would be fired.

I have open documentation to that, because it was overheard by one of the trainmen that had just been previously fired for toxicological examinations.

In April, I was cited for being profane to an official in Mojave, CA, and consequently removed from service after an investigation. I was out of service for 5 months, Mr. Chairman.

I believed then, and I believe now, that it is totally in regard to trying to apply Federal law. We have a big push in California, and I am the main pusher, to push Federal law.

I have been told on several occasions, we do not care about Federal law. We are here to run the railroad for one thing, and if we have to we will pay all the civil penalties we have to pay.

And I am constantly plagued with management abusing Federal law. I turn in violations, my men turn in violations, we will not sign a statement to the FRA that the FRA requires, mainly because the FRA shows it the company.

The company in turn comes back out to the property and for some unknown reason or rule violation, that person is removed from service. But it never pertains to the Federal regulation.

I can go on and on, Mr. Chairman, about the many things that are going, the harassment charges that have been going on. I personally brought four files with me that are highly documented.

I can leave it at that. But I totally believe that if you put a fearful person at the throttle of an engine, or you put a fearful person on a 10,000 freight train on a 2.2-percent grade or any grade, that you have not got an employee that is capable of doing everything that he is potentially able to do.

People are afraid to go to work. They know if they go to work, they are in a war zone type situation, that they do not know if they are going to have their employment yanked out from underneath them.

I had a man in West Colton, CA get his employment yanked out from underneath him while he was in the modules in West Colton. So, you are in a fearful situation when you go to work.

You are in a highly dangerous position, a highly dangerous job. But this type of harassment is going on all over the railroads. I can personally testify to the Southern Pacific.

And I have been employed by the Southern Pacific going on 20, 25 years, Mr. Chairman.

Senator EXON. Thank you, Mr. Bannister. The material that you said you have there, do you have that in a form so that we can incorporate that as part of the record?

Mr. BANNISTER. No, sir, I do not. I was not informed to do so. I think it was an afterthought about appearing here.

Senator EXON. If we could arrange for that with staff, I assume most or all of that material is copyable. Before you leave could you see a member of our staff here, and maybe you can go with them to make sure it does not get lost.

I would very much like to have a copy of what you have there to complete our files on this testimony. Would you be willing to do that?

Mr. BANNISTER. Yes, sir. I would be more than happy to.

Senator EXON. Thank you very much, Mr. Bannister. Mr. Wolf? Is that right? Are you next?

Mr. WOLF. Yes, sir. Thank you, sir. Mr. Chairman, I am the local chairman and vice general chairman for the United Transportation Union of Savannah, GA. My name is Ray Wolf. I have 25 years experience on CSX Transportation, Inc.

First of all, I would like to thank you, Mr. Chairman, on behalf of the representatives here. I would like to say that you had enough forethought to ask the people who were more interested in safety than anyone in this room. That being employees that work on the trains.

We operate the trains, and nobody that I know of is any more interested in safety than we are. Something I heard today from Mr. Riley disturbs me.

My legislative representative from my local and myself have diligently processed violations of the power brake law, the Safety Appliance Act, to Mr. Snyder of the UTU. And the FRA has found that on numerous occasions that we were right.

However, he testifies that he wants to license engineers to operate trains. Now, I do not have a lot of time, but I am going to ask you a question.

How would you like to climb on a train, like Mr. Bannister says, is 2 miles long, maybe 14,000 tons, without knowing that the train has been properly inspected in accordance with Federal standards?

My point is that I represent trainmen and conductors. We are being required on a daily basis to inspect trains and perform the initial terminal break test all over CSX Transportation, without benefit of the training from my good brother down here from the commerce department.

I think he testified that he had 732 hours of apprentice training, or 732 days, either one. I am here to tell you, I have been working for the railroad 25 years, and I have never had that much training.

And then you think about performing a break test. What I know about the break test and all the Safety Appliance Acts and all the other Federal standards that deal with safety on our Nation's railroads is what I have learned as a local chairman in trying to inform my membership in how to perform their duties when the railroad will not and has not.

And I would like to say to you and this subcommittee that the employees that I represent and UTU represents, and I do not have any doubt in my mind on CSX, but all the railroads in this country, we have not been trained in the power brake law.

It is a Federal standard that was put into effect by the Congress to provide safety on our Nation's railroads. It is not being complied with. They are violating the law. And the FRA is not, under any circumstances, whatever they say, they are not making officials comply with the law.

They are not training these people, not training our people. The trainmen that I represent, they are not trained in the railroad freight car safety standards or the Federal Safety Appliance Act.

Now that deals with inspecting the very trains that we climb on every day, that we get up and down on every day, that we run down the track 60 and 70 miles an hour every day, and pass these camp cars where these other good brothers are spending the night. The trains are not being inspected properly.

Another thing I would like to say to the subcommittee is, one reason I became a local chairman, because I was appalled at the lack of training, and I was interested in safety.

Now, if you got any people from CSX Transportation here from Savannah, GA, they have used me on employee safety councils, I have gone to them numerous times about increasing employee awareness of operating rules and safety rules and reviewing the road.

Now, we have a test every year, about 50 to 60, maybe 100 questions, it differs. But I am telling you that the railroad is interested in safety when they put a placard on the wall, when it gets down to it and you see a placard that says, thumbs up for safety, or, let us get back to basics.

And I am telling you as a representative of this membership and a man that works on these trains, they had better get their act together or these fatalities that they are talking about that have been increasing over the last 2 or 3 years, we have had 8 fatalities on CSX this year.

Eight men have died. I do not know what the circumstances were. Mr. Riley seems to think that these men may be employee failures.

But what I am saying to you is, if you climb on an Amtrak train or you want to review the road and climb on one of these freight trains, would you not want the employee operating that train, the conductor that is in charge of that train to be fully informed of the operating rules and the safety rules every working day he goes to work.

And I am telling, the men are not as informed as they should be because the carrier is not enough interested in safety to make sure these crew members and these train men that I represent are instructed.

We are not going to get any better safety conscious unless they do something about it.

Senator EXON. Mr. Wolf, I am going to have to interrupt you or I am going to miss a vote. I am sorry. That is just the type of life we lead here.

My answer to your question is, yes. I must go and vote. I will return as soon as I can get back. Then we will proceed with Mr. Parker, Mr. Minton, and Mr. McKeown.

In the meantime, I would like to have you take a look at those pictures, because I am going to ask each one of your whether that is typical or not.

Mr. MORRISSEY. Senator, one thing. I do not believe any of these other crafts lives in these bunk cars.

Senator EXON. Well, they must represent and be close to union people who do. I would think they would have some knowledge of it, Mr. Morrissey.

We will stand in recess until I return.

[Recess.]

Senator EXON. We will reconvene. To the witnesses and to those in attendance, I apologize for the schedule this afternoon.

There is just nothing we can do about it. That is the way we run this railroad. I hope you do not run your railroad as badly as we do this one.

Before I go on, so that I do not forget it, did you all look at these pictures, and what is your comment about these pictures? Are they typical at all? Is that Mr. Minton over there? Mr. Minton?

Mr. MINTON. I represent the engineers and I would say that the only difference between the camp cars that I am familiar with and those is that the pictures are missing the smell, and our camp cars are painted white.

That is typical of the conditions. It really is. On my level, in eastern Pennsylvania, when I attend labor staff meetings, the people who are Spence's (BMWE representative) counterparts list this as their major complaint.

And I know on head end of the train, as the engineer, when I go past these camp cars, I have no slow orders, I have nothing that tells me that they are even there, let alone the fact that I should be concerned about them.

Senator EXON. Mr. Parker, Mr. Wolf?

Mr. PARKER. Mr. Chairman, we do not live in these camp cars anymore because of the hours of service. But those pictures are typical of the camp cars we had at one time.

Senator EXON. But not anymore?

Mr. PARKER. Oh, no, sir. In the hours of service, we have got to be completely away and get our 8 hours' rest.

Senator EXON. Mr. Wolf.

Mr. WOLF. Mr. Chairman, we pass these cars on a daily basis, on CSX, on the portion of the railroad that I operate on.

I would like to call to your attention the safety appliance violations contained on those cars.

Senator EXON. Yes, I saw them. They are all circled. I pictured it. Mr. Bannister.

Mr. BANNISTER. No, sir. On my part of the railroad I do not, I am not familiar with the camp car.

Senator EXON. You have never heard complaints about it?

Mr. BANNISTER. No, sir. I am on the train that goes by, but I have never seen them.

Senator EXON. OK. Mr. Crawford.

Mr. CRAWFORD. Senator, as stated we are the craft who builds and maintains the cars, and we do use certain of these type cars in our derailments, whenever we have to spend the night. However, we do maintain our own.

But if I were to see one of these cars on the railroad, I would shop each and every one of those cars for repair. That is atrocious.

Senator EXON. Mr. McKeown.

Mr. MCKEOWN. My position, I do not come in contact with them, although I do see them along the road, but I have never been inside one. I admit that.

Senator EXON. Mr. Morrissey, I would just like to ask you, are these typical of these track cars in Nebraska?

Mr. MORRISSEY. I have lived in worse, and I have lived in better, so I guess that makes them typical.

The problem is they are not covered by those violations you see, on exposed wires. They move from state to state. Like in our state they go from Nebraska to Missouri to Iowa, and then all the public service commissions wipe their hands of them and say, we are not responsible because it is interstate.

Those particular cars were from Florida and they were moving to Alabama, so the public service commission——

Senator EXON. When were these pictures taken? Do you know?

Mr. MORRISSEY. In 1986.

Senator EXON. In 1986. So they are new pictures?

Mr. MORRISSEY. Yes.

Senator EXON. Thank you very much. I assume you had finished your testimony, Mr. Wolf.

Mr. WOLF. Just one added thing, Mr. Chairman. I reviewed the RLEA's proposals, and I highly recommend to the subcommittee that you take into consideration item No. 2. We need it very, very bad on the properties.

Senator EXON. Mr. Parker?

Mr. PARKER. Thank you, Mr. Chairman. My name is Lewis Parker. I am a signalman, and also a local chairman for the Brotherhood of Railroad Signalmen.

I have been employed by the Burlington Northern as a signalman and signal maintainer for 36 years. My present headquarters is Louisiana, MO.

I would like to express my concern for that part of the pending legislation concerning the requirement that Federal rules be promulgated to govern the installation, maintenance, testing, and inspection of grade crossing protective devices.

Congress has appropriated many Federal tax dollars to be used for the construction and installation of these devices. However, there are no Federal rules which require that after installation these devices provide safe and proper warnings to the motoring public.

The railroad I am employed by has their own rules for the maintenance of the protective devices. However, these rules can be suspended, altered or changed at any time the railroad supervision sees fit for such a change.

As an example, under certain conditions I have been verbally instructed to forego the inspection and testing of crossing protective devices in order to provide the necessary time to repair and/or make tests on other signal systems.

We are further concerned with the crossing protection devices in place on railroad properties which have been purchased by so-called short line operators. We are certain they neither have employees nor rules to provide the expertise to properly inspect and test these sensitive safety devices.

I will be happy to respond to any questions you have or any other Members of the subcommittee in connection with these important matters. I also have two, I guess you could call, reports on crossing accidents that express our concern.

In both cases the crossing protection was not working. I also have a history, which I am sure you have several copies of, of our efforts to get this legislation passed over the last 15, 16 years.

I also have two comments to make in reply to Mr. Riley's testimony. He testified, the 2 percent accident rate on crossings, where the crossings did not work, the FRA reports are made off of reports that are filed by the carriers themselves.

So therefore they are not exactly the most accurate investigations. I also take exception to the fact that he says that the crossings are shut down, taken off line, to make an inspection.

I do not know how the FRA makes that inspection. In my tour of duties, I never shut a crossing down. I make the inspection with an operating test. And as often as possible with an actual train.

Not a simulated test. I am there when the train goes, I make notes of the times. I test the lights, the bell, the focus of the lights, whatever is necessary. Thank you, sir.

Senator EXON. Mr. Parker, thank you very much. And the additional information that you just have there, if you could leave it with us, without objection, I would like to make that a part of the record.[1]

Mr. PARKER. Yes, sir. These reports and the history are for your information, and we would like to make it a part of the record.

Senator EXON. All right. Will a member of the staff please pick that up so we can have it.

Mr. Minton, we are happy to recognize you now.

Mr. MINTON. Mr. Chairman, I represent the locomotive engineers of the group. We are a small minority of the big picture. We are always pushed out on the end here (indicating the end of the table).

I am presently working on the eastern region, Philadelphia division, of Conrail. I have been a locomotive engineer or in engine service for 18 years.

I work for Conrail, and have worked for its predecessor railroads, New Jersey Transit, SEPTA, on a lend-lease program to the Long Island Railroad, and Amtrak. All transit agencies and railroads of what is now the northeast.

On the subject of licensing of locomotive engineers, I am favor of it if for no other reason to restore the confidence of the American people, as travelers and shippers in the rail service.

It is important that everyone know that whoever is running the train is capable of doing it. It is imperative, and it seems foolish that we have gone this far without licensing, in my mind.

The second, and probably the biggest problem in the industry, is this locomotive safety inspection issue. I have listened to Mr. Riley and I have to take exception. He is an excellent speaker, but I have to take exception to a lot of things. Try and picture, if you will, my intentionally making my job harder. I have never said, nor have I heard another engineer ever say, "gee, I hope when I get on this engine the speedometer does not work", or "the dashboard lights do not work, or there is some other impediment that makes my job harder than what it is.

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[1] The material was not reproducible and is in the Committee files.

There are some real problems in the enforcement portion of that, and I do not want to see the onus put on the employee because I am David against Goliath, but I do not even have a slingshot.

There is no way I can make these people fix their equipment. The solutions? It is too long-winded to go into that.

The next biggest problem we have is hours of service. Under the present ruling, we can be worked continuously around the clock with an 8 hour break in between our assignments.

Now our assignments range anywhere from 8 hours to 11 hours and 59 minutes, and in that interim period we rest, but the rules have been diluted so we are entitled to 6 hours actual rest.

That is from the time we get done with the job until the time the phone rings again, asking us to report back to work. The problem here is that the 6 hours rest includes getting from the job site back to our home, eating, sleeping, attending to family affairs, whatever comes up in the normal course of life.

The end result is, 6 hours later the phone is going to ring again, and this happens around the clock, 7 days a week, broken only by the seasonal changes and the assignment. The employees definitely need to know that when they are done they will be entitled to a sufficient amount of rest.

The way to accomplish that is to give them an 8 hour call to duty. That way they know that if it is 2 o'clock in the morning and they are called to work, they know that they have to, in that 8 hour time period, get sufficient sleep so that when they arrive at their assignment they are going to be rested.

It also permits them time to attend to whatever business they have. It is not quite as cheery as everybody makes out that the locomotive engineers job is similar to a pilot. Well, I guess it is from the pressure aspect, but not from the, how should I say? It is not all glory, let me put it to you that way.

[The statement follows:]

STATEMENT OF JEFF MINTON, LOCOMOTIVE ENGINEER, ON BEHALF OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Good afternoon. My name is Jeff Minton. I am a locomotive engineer presently working on the Eastern Region, Philadelphia Division of Conrail. I also serve as a labor representative for the Brotherhood of Locomotive Engineers (BLE) on behalf of our members on Conrail and New Jersey Transit Rail Operations (NJTRO). In the past eighteen years I have operated the equipment and locomotives of Conrail and its predecessor railroads, including what was or is now Amtrak, Southeastern Pennsylvania Transportation Authority (SEPTA), NJTRO, Penn Central, and on a lend/lease program, the Long Island Railroad. I am fortunate to have had continuous employment in an industry that has been in a state of transition for a decade or more.

I appreciate the opportunity to present the view of the people who will be directly affected by the legislation developed by this Committee and. subsequently, by Congress. There are several concerns about the rail safety issue that need to be discussed in more detail.

LICENSING OF LOCOMOTIVE ENGINEERS

Perhaps the most urgent of these issues is the licensing of locomotive engineers. In the aftermath of the recent rail accidents, it is imperative that a licensing program be established which would provide minimum and reasonable standards for the engineers of this nation's trains. The passengers and shippers who utilize rail service in this country should be able to use the service with confidence, knowing that the people in control of the train are truly capable and qualified to accomplish the task at hand.

LOCOMOTIVE SAFETY INSPECTION

This problem transcends several levels of government/carrier policy, yet the impact of the problem is borne by the employee. It is a complex problem because there are presently sufficient safeguards in place that prohibit the use of altered, defective, or non-complying locomotives. These standards are specifically outlined in the current regulations entitled 1980 Railroad Locomotive Safety Standards & Locomotive Inspection. The financial penalties attached, should the carriers ignore or chose not to fix listed defects, is sufficient to warrant compliance by most prudent managers. It appears from the feedback I get at my level, that the enforcement of the regulations is practically non-existent. As Mr. Riley, FRA Administrator, admitted after the Chase, Maryland disaster, ". . . . the paper trail indicated complete compliance; the on-the-property inspections resulted in numerous defects and/or altered safety devices.

Why isn't it working? Where is the system breaking down? Where does the fault lie? Can it be made to work? The answers to these and other questions on this subject are contained in the commonsense section. Railroading, like any other business is a bottomline venture. If it is possible to circumvent this aspect of the cost of doing business, it will be done, provided it is condoned or accepted by the authorities. In 18 years I have never said to myself, or have I ever heard another engineer express a comment like, "Gee, I hope my engine has a broken speedometer so I can guess how fast I am going." or "I hope the gauge lights (read dashboard) don't work so my job is harder in tunnels or at night."

In my 18 years on the various railroads, I have been coerced, intimidated, threatened, cajolled, appealed to, ordered to, and pressured to accept equipment at less than the standards presently in place. I have worked with others who have stood their ground, putting safety before on-time performance and watched as life on the job became a struggle, a series of confrontations about every aspect of their job. The impact of this problem is truly borne by the employee because he is "in the middle." If I refuse defective equipment, I am labeled a troublemaker. If I work with it and something goes wrong, it's my fault for using it. There are operating rules in this industry to cover every aspect of the operation. So many rules that you can be charged with any violation, and there will be rule support to prove you were wrong, no matter if you were or not.

There could be volumes written by me or any engineer on this subject. Suffice it to say that no matter what good intentions are implied by the law, the locomotive engineer is not in a position to effectively police the carrier's maintenance standards of equipment. The employee is David, without the slingshot.

Perhaps the solution lies in a "ready check sheet" listing of the requirements for locomotive units. The various items must be checked and the results noted before the unit is dispatched. A simple "Yes, it works" or "No, it doesn't" format with an authorizing signature other than the engineers needed to dispatch non-complying equipment. Remember, my job is hard enough without having to overcome the problems of missing or defective equipment.

On this same subject, there is something that is indicative of the carrier's attitude toward inspections of equipment and the ambiguity of the rules, all bound together in an unbelievable scenario. I have worked for several Class I railroads, each has been adamant that I complete an EL-106 (Locomotive Inspection Report) during my tour of duty. The instructions on the form require that I complete this task in accordance with Federal Regulation 203, but none have ever provided me with a copy, inspite of the fact that I am given enough books to fill a small suitcase. I am required to have them all while on duty. I wonder why they don't tell me what I am to look for in the way of FRA defects.

HOURS OF SERVICE

There was a time when the railroad industry was labor-intensive. Craft lines were maintained and craft responsibilities clearly established. The occupational title would indicate that my job is to get the train from Point "A" to Point "B", and that is still my primary function. That alone has become more difficult as trains have gotten longer, crew sizes have been reduced, and productivity and on-time performance have become the measurements of success.

As the industry improved itself with technological and productivity advances, the hours of service law did not keep pace. Over the last decade the scope of my job as a locomotive engineer has been expanded to include work formerly done by other crafts. I am now an engineer, part-time clerk, maintenance man, equipment inspector, rules interpreter, hazardous materials expert and more, depending on the company I work for. I do not take exception to any of these demands. I am, and so are the other engineers I work with, capable of doing these jobs. Give me some instruction, point me in the right direction and it will be done. Bear in mind, however, that all of this takes its toll on mind and body. I am only a human being like yourself.

Presently Extra Board employees are required to be available for service 24 hours a day, 7 days a week. A two-hour call in advance of the sign-up time has evolved as the industry standard. This means that the Extra Board Employee must be at their assignment within two hours of receiving the call.

The regulations also provide that covered service employees be given only eight hours rest between assignments. Subsequent interpretations have diluted the intent so that now a six-hour off-duty period after having worked 11 hours and 59 minutes is permissible. In the six hours off duty, the engineer will drive home, shower, eat, sleep, and attend to the myriad of family affairs, social obligations, and problems that need his attention. At the end of that six-hour period, the phone will ring again. The engineer has two hours to gather his belongings, his lunch and himself, to drive back for another tour of duty lasting in all probability, another 11 hours and

59 minutes, and so it goes on and on, day and night, weekday and weekend, broken only by the inconsistency of the seasons and the assignment. As you can see, a treadmill existence can and does develop for the very people who you want to be alert, rested, knowledgeable, and efficient.

The trend in the industry is toward Extra Board, Utility Employees. People who are qualified on multiple aspects of the job, as well as the physical characteristics of the roadbed. The example in the preceding paragraph is fast becoming the norm, and not the exception. The solution lies in providing a rest period that is commensurate with your expectations of the condition of the engineer who is starting out on his trip or assignment. The present hours of service law should be amended to provide for an eight-hour call in advance of the sign-up time. This simple remedy would solve a multitude of problems, but most importantly, it would permit the engineer the opportunity to rest prior to assuming control of the train.

Additionally, some limits should be established concerning the number of tours or trips worked in a month's period. Today there are no guidelines or limits. Engineers, when assigned to the Extra Board, are required to work or be available for work on a continuous basis. Permission to be absent from duty with permission is not granted easily and can never be counted on. Establishing a limit of 22 tours or trips per month would accomplish several goals at once, including allowing the engineer to rejuvenate both body and soul.

ENGINEER INVOLVED IN AN ACCIDENT

This issue is never at rest in the eastern portion of the nation. I assume that the high incident rate of people killed or seriously injured by trains is in proportion to the population. For example, a newspaper article in The Bucks County Courier Times (Bucks County, Pennsylvania), dated December 10, 1986, stated that nine persons had been killed by NJTRO trains to date in just two of the New Jersey counties served by that carrier. I have personally hit numerous animals, and it has always saddened me. I hope I never have the misfortune to kill or maim another human being with a train. As a labor representative, I serve as a sounding board for my members who have. Most of them recount the entire incident in minute detail, always including a comment such as, "I couldn't do anything to save her. I was looking right at her, but she knew she wasn't going to make it. I still remember the look in her eyes."

I am not equipped to address the emotional trauma of the incident, but I do feel that each engineer who is involved in an accident of this nature should be afforded some relief. Three basic,immediate needs should be met --

1. Relieve the engineer. Do not permit him/her to continue on with the assignment.
2. Provide the engineer with transportation from the scene.
3. Provide counseling for the engineer if needed, with no loss in earnings.

Without a federally mandated course of action on this issue, the engineer remains liable to whatever decision is imposed by the on-duty supervisor who is often not even at the scene of the accident. Usually the sequence of events after the accident is as follows:

1. Any crew members hurt?
2. What's the damage to the equipment?
3. As soon as the police release you, get the train moving. We'll get your statement later.

Do you think it's possible for the engineer to devote his full attention to running his train? As he is going over the road with a thousand passengers in the coaches behind him, do you think he might be thinking about the people who were killed and how it will affect him. We are going 110 miles per hour enroute to New York City, decisions can't be made by a man who is mentally still at the accident scene. Seconds count.

It is unfortunate that the subjects discussed here today need be addressed at all, but the railroad industry (like so many others) must be regulated in an effective manner to safeguard the travelers and shippers. For the small part I play in accomplishing that goal, I stand ready to answer your questions.

Senator EXON. You certainly run closer on time than the airlines.

Mr. MINTON. It seems that way. I have taken some flights lately.

I see my time is up. There is one more issue that is of real concern, particularly to me, because I am in the east coast area, and the population is great.

The problem of the engineer being involved in an accident. The situation, as it exists right now, is that there is no policy in place. I myself have never had the misfortune to kill or maim anyone with a train.

But as a labor representative I deal with the people who have, and each of them can recall the incident in the most minute detail. The part that is distressing is that they usually see the people, but are powerless to do anything.

In many instances they have eye contact with the people because they are right in front of the engine, but there is no relief for the engineer.

Usually, what happens is that if a supervisor shows up, and that is not always possible because of the distances, the primary questions are; Any members of the crew hurt? Can you move the equipment? As soon as the police release you, move the train. We will take your statement later.

And there definitely, in this day and age, needs to be some adjustments made so that in the event an engineer has the misfortune of, whatever the reason, suicide, grade crossing accident, whatever the circumstances, if it results in serious injury or death, he should be taken off the assignment right there.

He is not in any condition to run a train, especially in a busy corridor like the Northeast corridor. It is just inconceivable to me that a man could keep his wits about him after experiencing an accident of this nature.

There is definite need not only for reform but some sort of policy to begin with. We have none now.

Senator EXON. Mr. Minton, thank you very much. On a related subject, have you ever taken a train down the track where the warning system takes over?

Mr. MINTON. Yes. OK. Now, this is a very—[pause]—it is hard to capture the essence of the problem here because there is a multitude of factors involved, one of which is that as a locomotive engineer when I will show up for work.

I do not get the option of inspecting the equipment if it has been previously inspected by another craft or another engineer, I have to accept it as is. I am not afforded the opportunity of making my own inspection.

I have to assume that the person who did it before me has completed all the necessary inspections, and I must take his signature as valid proof that everything is properly done. The reason that this is done is because we are in a era of bottom line railroading.

We want to move maximum cars in the shortest amount of time. If I come to work and do double-duty, if I reinspect the equipment, well, then there is the question of, what is his real function, moving the train from A to B or be doing reinspections.

So, how did the whistle get taped? I can give you 10 different reasons.

Senator EXON. But you could untape it, could you not?

Mr. MINTON. Oh, yes. Certainly. Certainly.

Like I say, understand now that when I leave with my train, if it has been previously inspected, my first indication that the whistle is not working is when the cab signal reduces to a less favorable indication.

So I will not know until that time. Now we are going over the road, the train is moving. There might be 100 cars behind me. Or 1,000 people, depending on what the job is.

What you are saying is that, do I have the option of stopping the train and untaping the whistle, or do I continue on until the first available time?

Senator EXON. Well, obviously if you are driving a train down the track and something happens to it that impairs the safety of the train or the people that are on it, you have the right as an engineer to stop the train. Do you not?

Mr. MINTON. Truthfully, no.

Senator EXON. You do not?

Mr. MINTON. It is a case of——

Senator EXON. If you got on the train and you saw a crack on one of the wheels of the locomotive, you would be forced to take that train out of the station?

Mr. MINTON. I would not say that I will be, but I will say that I could be.

Senator EXON. I am not getting personal with you on this thing, but it has always been a feeling of mine that members of the railroad union cover for each other on such things as use of liquor.

Do I assume correctly?

Mr. MINTON. I would say that in times gone by that was true, yes. In the last several years the entire industry has turned around both from the regulations that have been put upon us, and by the men themselves.

It is different than it was back when there were steam engines. People's perception of locomotive engineers and conductors and the rest of us are locked in an era of glory and romance,

And we have leaped ahead light years. We are into technology on the railroad, just like in any other industry, we cannot afford to be lax. We cannot afford to come to work drunk, to be perfectly honest with you. And for the few that do, there is peer pressure.

Senator EXON. OK, that was my next question. There is peer pressure.

Mr. MINTON. Yes, there is.

Senator EXON. I am glad to hear that.

Mr. MINTON. Well, there is peer pressure for a number of reasons, because I have to depend on my coworker to save my life as much as he has to depend on me to save his.

And I cannot afford, not at 125 miles an hour out here on the corridor, or not at 50 miles an hour with a freight train to be lax. It is just moving too fast.

Senator EXON. Thank you very much, Mr. Minton.

Mr. MINTON. You are welcome.

Senator EXON. Mr. McKeown, we will go to you. Thank you for being so patient.

Mr. MCKEOWN. Mr. Chairman, my name is Eric McKeown. I am a train dispatcher for Conrail, and I have been one since 1963.

I also am a general chairman for the American Train Dispatchers Association and represent approximately 435 members across the Conrail system. We are here today, of course, to invoke rail safety.

I think this lies in my craft within two areas. Number one, it lies within the backup of the train dispatcher where he has the authority. Years ago, we had operators who were in switching towers along the railroad who received instructions from a train dispatcher.

They would set the signals for the trains. They would put the train on the designated track. And if need be, they were issued written instructions for whatever consequence that would be needed for the trains themselves.

We are into an era now where the operator and that switching tower have been removed, and therefore the train dispatcher in some respects is there all by himself.

We feel that especially in regards to new employees who are entering the dispatching force, that it would be most beneficial if they would undergo some sort of a training program to not only review the rules that are pertaining to their craft, but radio procedures, the displaying of signals, also in getting over their territory in a physical manner to know what they are dealing with.

And second, also interference that involves with respect to the radio procedure. We have much interference at many times with other railroads in the area, and also other departments of the railroad who are in tune on our channel.

Consequently at many times they drown us out when we are issuing very important instructions. The FRA has been on our property. They have looked into this very deeply.

And I would certainly feel that they are going to take the necessary steps with the carriers to ensure that these things would be taken of in a better manner.

That concludes my statement. Thank you, sir.

Senator EXON. Mr. McKeown, thank you very much. Gentlemen, we very much appreciate your taking the time and effort out of your schedule to come in and testify.

But we think this is an important subject and needs an in-depth review. So on behalf of the committee and myself, to each and every one of you, thanks for coming and you are excused.

Thank you for coming. Would you please proceed. And if you have any prepared testimony, we will certainly accept it as part of the record, without objection.

STATEMENT OF DR. ROGER HORN

Dr. HORN. I have already given your staff 65 copies.

Senator EXON. Thank you. Please proceed.

Dr. HORN. The prepared remarks that I have given you and your colleagues are the obligatory intellectual exercise of a college professor. That is what comes from the head. You will have that for the record. I would like to spend my 5 minutes talking from the heart.

We heard earlier the suggestion that Chase no longer weighs heavily on the mind of the traveling public. I can assure you it weighs heavily on the minds and the hearts of the families of the victims.

I am not sure that you know that a majority of the victims of that crash were children. There was a writing exercise in my son's class fourth grade English/writing skills. All the children in his fourth grade were asked to choose a Senator to write to about the issue of railroad safety, because they had all been affected deeply by the events in Chase. I had the privilege of reading those letters before they were mailed. I know that you got a couple of them and so did your colleagues on the committee.

I was really struck by how many of those kids said something like the following: "I have never ridden on a train. I used to think I would like to, but I am afraid to now."

The events in Chase on January 4 really blind-sided a lot of us. We had become accustomed to the fact that rail travel was very safe. In fact, some figures that I saw yesterday indicated that most of the passengers who have been killed on railroad trains over the last many, many years have been killed while getting on and off trains.

Very few people have been killed in train crashes, and this was the worst crash in Amtrak history. It was a shocking experience for the public to suddenly be brought up short with an enormous loss of trust: we thought everything was all right, and we discover everything is not all right, that in fact this accident was waiting to happen for years and years, and it is still waiting to happen again today.

Senator Kasten remarked about the continuing sabotage of safety equipment and commented that very little had changed since January. I think that is true. Very little has changed since January.

A few steps have been taken, but, for example, Conrail still has no effective drug control program. Conrail is still not participating in the Redblock program. To its credit, Amtrak now is participating in a Redblock program.

The public simply cannot understand how these things could happen. There are a couple of suggestions that I hope might guide the committee as weaves its way through this very complex matter of trying to assure greater transportation safety.

The first is that structural safeguards are always better than procedural ones. Let us not lose sight of that. For example, it is better to eliminate all dual use of high speed tracks by passenger and freight trains. And it is better to have automatic train controls than it is to rely only on observance of operating rules, which can always be violated by careless operators. For example, consider the taping of alerting whistles. We hear that it is a continuing problem, 69 instances in the last 4 months, after being a prime cause for a very serious accident.

I think it is outrageous that this practice is continuing. I also think it is wrong to focus on fines to get people to stop doing this. These are procedural solutions; we need structural solutions. I could turn to any freshman electrical engineering student in my calculus class, and ask him or her by tomorrow morning to design a tamperproof alerting device that could be used in any locomotive. It would be done. Is this beyond the enigeering capabilities of our major rail companies?

Now, why have tamperproof alerting devices not been installed? Let us not just try to find the guys who are taping whistles. Let us instead find ways to keep them from disabling safety devices in the first place. There are certainly ways to do for that.

The second is that individual personal responsibility for operating safety must be clearly defined and penalties for violations must be severe, swift, and unavoidable. It is simply ludicrous that operating crews can take out trains with egregious safety faults and then no one can be held accountable.

It is unacceptable that a drug-impaired crew member can contribute to a fatal accident and yet cannot thereafter be charged with any crime by the state or by the Federal government.

The third is that Congress should in general not try to micromanage any enterprise, in particular safety, but should instead establish general principles and charge competent executive or regulatory agencies with the responsibility for carrying them out. Of course, appropriate authority must accompany this responsibility.

The suggestions that DOT has brought forth for enhancing the authority of the FRA merit, on this principle, very serious consideration. Rather than having the Congress work at devising 10 or 15 specific legislative items, let us charge FRA with the general area of rail safety, give them adequate tools to do the job properly. The responsibility of the FRA to assure rail safety must be unequivocal and the authority to do so must be adequate and unassailable.

It is ludicrous that FRA inspectors can find people doing terrible things and cannot find any way really to control them.

There are two areas that have not been addressed in any of the legislative proposals that I have seen. The first is criminal sanctions for rail employees and managers who engage in especially egregious contraventions of safety rules, who repeatedly ignore other penalties, or whose violations of safety rules result in serious injury or death to passengers, employees, or wayside citizens.

The new civil penalties proposed by DOT are appropriate for probably 99 percent of all the likely violations, and they certainly are to be preferred in general to criminal penalties that might otherwise clog the courts. But there must be some level of violation that would incur severe criminal penalties, or otherwise there may still be insufficient incentives for railroad managers to take the sometimes costly steps necessary to assure rail safety.

The final area that I think needs attention is the Federal Anti-Drug Abuse Act of 1986, subtitle T, chapter 17A, which seems to contain the only criminal sanction for common carrier operators who operate while under the influence of alcohol or drugs.

The problem with that statute is that it provides a specific blood alcohol level of 0.10 that is presumptive evidence of being under the influence, but it sets no similar quantitative standards for drugs. It merely refers to detection of levels that are sufficient to impair.

This is just simply an excuse for a court battle by experts. No one is ever going to be convicted on this basis. A totally drug-free environment is appropriate in our transportation system, and the detection of any levels of illegal substances should be presumptive evidence of impairment.

Finally, Senator, it is clear that there are many constructive elements in the DOT proposal of February 20 and in Senators Lautenberg and Mikulski's Senate bill 1098, and it should be possible for your committee to construct a landmark rail safety bill from the best features of each and from additional suggestions that have been developed from the thoughtful comments presented in these hearings.

The traveling public deserves the safest transportation system possible, and you should give them no less.

Senator EXON. Dr. Horn, thank you very much. I know it is not easy for you to come here today. We appreciate not only your written statement, but your words of wisdom.

Thank you. You are excused.

[The statement follows:]

TESTIMONY OF ROGER A. HORN

Mr. Chairman and Members of the Committee:

Thank you for your invitation to comment on the important area of rail safety. The public, the media, and many members of this Congress have been more than usually interested in rail safety this year as a result of the tragic Amtrak/Conrail crash in Chase, Maryland on January 4, that took the life of 16 persons, including my 16-year old daughter and 8 other children. We and the other 12 victim families trust that you will sift the findings, weigh the recommendations, and courageously incorporate the lessons of that crash into landmark rail safety legislation that will restore the faith of the travelling public--it would be the most appropriate tribute to the victims that you could make.

There are four general principles that should be useful in your task of writing a rail safety bill:

1. *Structural safeguards are always better than procedural ones.* Thus, it is better to eliminate all use of high-speed passenger corridors by freight traffic and to require automatic train controls than to rely on "operating rules" that can be ignored by careless operators. Similarly, it is better to have *tamperproof* alerting devices in train cabs than to make and attempt to enforce rules against tampering with such devices.

2. *Individual personal responsibility for operating safety must be clearly defined, and penalties for violations must be severe, swift, and unavoidable.* It is ludicrous that operating crews can take out trains with egregious safety faults and no one can be held accountable. It is unacceptable that a drug-impaired crew member can contribute to a fatal accident and yet cannot be charged with any crime.

3. *Congress should establish general principles and charge executive agencies with the responsibility for implementing them.* On this principle, the proposal from the Department of Transportation (DOT) to give the Federal Railroad Administration (FRA) expanded authority to deal with evident overall safety problems is to be preferred to writing numerous individual laws dealing with individually recognized safety problems. For example, the FRA has already acted to require automatic train controls on the Northeast Corridor, long before any bill to require this could have made its way through Congress.

4. *The responsibility of the FRA to assure rail safety must be unequivocal, and its authority to do so must be adequate and unassailable.* Safety regulation is a natural and appropriate function of the federal government, since it assures the public of a safe travelling environment and guarantees a level playing field to all rail industry competitors. The authority of the FRA in the safety area should be so strong that if there is some inadequacy in rail safety, there will be just one place to place the blame and one place to go to seek a remedy: the FRA.

We have learned to our horror that neither the railroad companies nor the railroad unions will voluntarily enforce appropriate levels of operating safety, not even those railroad companies that are actually creatures of the federal government. Clearly, the states cannot control massive interstate railroad companies and unions. Thus, as in many other instances in the history of regulation, it is truly necessary for an agency of the federal government to regulate one aspect of the railroad business: safety. Since it must be, let's do it right.

The most important new authority sought by the FRA in the Department of Transportation's proposed Federal Railroad Safety Authorization Act of 1987 (as submitted to this Committee on February 20) is explicit authority over *individuals*, including managers, supervisors, and agents as well as rank-and-file employees. Included specifically is "authority to regulate all aspects of railroad employees' safety-related behavior, as well as that of the railroads themselves". This new authority is the *sine qua non* of effective rail safety. It is historic, appropriate, and absolutely necessary. I urge you to resist all attempts to water it down. From it, in the hands of a vigilant and activist FRA, could follow implementation of many important safety measures that could more flexibly be put in place through FRA rulemaking than through prescriptive legislation. Examples are: licensing, data collection, control of substance abuse, and installation of use of, safety devices (including dealing with tampering); pre-departure inspections and records of these inspections; some of these important safety areas were discussed in more detail in my written testimony submitted as part of the formal record of the February 17, 1987 hearings of this Committee on the same subject.

If the Committee decides to enhance the authority of the FRA as it has requested, it will be important for the Committee to perform continuing oversight over the use of that authority. Charges have been made in the past that the FRA has been lax in using its existing authority, that it has frequently settled enforcement cases for 50-60% of already-modest original penalty assessments, and that it has relied too heavily on "notices of defects" (which are essentially warning letters) rather than formal enforcement actions. It would be appropriate to require the Administrator of the FRA to report to the Committee annually in a format designed to help it assess the vigor with which the FRA was using its new authority.

Overall, I hope the Committee will respond positively to the entire February 20 proposal from DOT. It responds creatively, yet with measured restraint, to the awful lessons of the Chase crash.

There is one area not addressed in the DOT proposal that I hope the Committee can give careful consideration to, and that is the matter of *criminal penalties for employees and managers who engage in especially egregious contraventions of safety rules, who repeatedly ignore other penalties, or whose violation of safety rules results in serious injury or death to passengers, employees, or wayside citizens*. The new civil penalties proposed by DOT are appropriate for most of the likely violations, and are to be preferred in general to criminal penalties that might otherwise clog the courts. But there should be some level of violation that would incur severe criminal penalties, for otherwise there may still be insufficient incentive for railroad managers to take the sometimes costly steps necessary to assure safety.

It is incongruous that railroad executives face criminal sanctions for price fixing and other anti-trust activities, but only civil fines for killing innocent passengers as the result of calculated business decisions to cut corners on safety. A manager's fine may wind up being paid, in effect, by the company, and hence ultimately by its customers. Experience with our anti-trust statutes shows that managerial attention to the law is marvelously focussed by the prospect of going to jail for violations.

The public cannot understand how an apparently substance-impaired engineer operating a safety-sabotaged locomotive can cause a terrible crash killing 16 people, and the only thing that can be found to charge him with is a state misdemeanor. Moreover, his managers and supervisors, who must have known or should have known that employees were routinely disabling critical safety equipment cannot be charged with anything, either civil or criminal. There is clearly a gap here, and I urge the Committee to fill it with a carefully crafted criminal statute that will encourage careful and continuous observance of safety rules and procedures by managers and employees.

A second area of criminal law that needs improvement is the Federal Anti-Drug Abuse Act of 1986, Subtitle T, Chapter 17a, which provides for a prison sentence of up to 5 years or a $10,000 fine or both for operating a common carrier while under the influence of alcohol or drugs. It provides that a blood alcohol level of at least .10 is presumptive evidence of "under the influence", but sets no similar quantitative standard for drugs. It refers to detection of levels "sufficient to impair" and thereby invites a court battle of expert opinions: no one is ever likely to be convicted for drug use under this statute. This new law should be amended to provide that **any** level of illegal drugs in blood or urine above trace amounts shall be presumptive evidence of impairment. Many drugs have long-lasting effects on judgement and perception, and *there should be no place in the public transportation cab or cockpit for anyone who uses illegal drugs at any time in any quantity.*

This Committee, of course, has already taken a monumental step forward in the fight against substance abuse in transportation by writing and reporting out nearly unanimously S.1041, The Transportation Employee Safety and Rehabilitation Act of 1987. The travelling public is keenly anticipating the protection of S.1041, and I urge you all to press vigorously for its passage by the full Senate as soon as possible.

A second proposed bill, S.1098 (Rail Safety Improvement Act of 1987), contains many desirable safety provisions, and overlaps considerably with the DOT proposal. Several of the provisions of S.1098, such as federal licensing of certain railroad personnel, and written certification of maintenance, tests, and inspections, could be handled under the general "authority over individuals" in the DOT proposal, rather than by explicit statutory provisions. The greater flexibility of the DOT approach in this regard is attractive. Section 7 of S.1098 contains a worthwhile provision to protect employee "whistle blowers" who report safety violations, and I hope the Committee will seriously consider such a provision in its final bill. I am unenthusiastic about the provision in Section 6 to permit certain absences of substance-impaired employees, which may encourage unintended mischief year-after-year; perhaps such a "permitted absence" should be allowed one time only to an employee, and then only if the employee registers immediately in the carrier's substance abuse treatment program.

One section of S.1098 with which I am in full agreement is its provision that among the minimum standards for fitness of safety-critical employees should be "absence of a pattern of off-duty legal and behavioral problems related to safety, including violation of State motor vehicle laws", and its requirement that such employees "authorize any State to provide any information regarding [themselves]... from State motor vehicle records". I assume that such authority would be included in the FRA's requested general "authority over individuals". There is also a provision in S.1098 that the National Driver Register (NDR) be tapped for information about rail employees, but I am concerned about any significant reliance on the NDR for this purpose. The problem is that the NDR is both too narrow and too broad for use in fitness decisions. State participation in the NDR program is only voluntary, so its data are necessarily incomplete. Moreover, NDR records only convictions, and then only for a few years. Since trial on even very serious traffic charges such as drunken driving can be put off almost indefinitely by a defendant who has significant incentives to delay conviction, important information that should be available for administrative decisions on fitness of safety-critical employees would not be available on a timely basis through the NDR. Moreover, the NDR covers *all* drivers, of whom safety-critical transportation employees are only a tiny fraction, so it seem inefficient to try to get better safety data by upgrading the whole NDR.

Since the issues of off-duty legal and behavioral problems of safety-critical employees are common to all the interstate transportation industries, we recommend that the Committee authorize the Secretary of Transportation to create a national data bank to which all such employees are required to report certain events. The FRA, FAA, and other regulatory agencies would then use these data as part of their procedures to determine fitness for service. Details of the content of this data bank and reportable events were covered in my February 17 written testimony to this Committee and are appended to this statement for your convenience. An important feature of our proposal for a national data bank is that it be publicly accessible, except only for data items that identify individuals. This feature would do much to restore public confidence that safety-critical employees are fit for service and would provide considerable cost-free oversight from media and academic researchers.

You also invited my comments on amendments proposed by rail labor, which I take to be the 12 RLEA proposals outlined in the written testimony submitted by Mr. J. R. Snyder for today's hearing. It is my impression that if the FRA were given the enhanced authority it seeks under a general legislative mandate to ensure rail safety, then it would have the authority to require any of these proposals that were found to be worthwhile. On the basis of general principle #3 discussed previously, the Congress should not concern itself with minutia of specific operating standards, but should insist that the competent regulatory agencies deal with such matters. Thus, my recommendation is that the DOT proposal be adopted, and then that the RLEA make formal proposals to the FRA and request rulemaking proceedings for the items on their list that they want to pursue.

It is clear that there are many constructive elements in the DOT proposal of February 20 and S.1098, and it should be possible for the Committee to construct a landmark rail safety bill from the best features of each, and from additional suggestions developed in these hearings. The travelling public deserves the safest transportation system possible, and you should give them no less.

Roger A. Horn
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APPENDIX

COMMENTS ON A NATIONAL SAFETY DATA BANK FROM TESTIMONY SUBMITTED TO THE SENATE SURFACE TRANSPORTATION SUBCOMMITTEE ON FEBRUARY 17, 1987

[All references to "license-holders" and "licensees" should be taken to mean "safety-critical transportation employees"]

2. **National Data Bank**. There should be a single national computer-based data bank containing specific information on all Federal transportation license holders and interstate transportation companies. It should contain: Basic identification data, summary cumulative information on training programs completed and routine medical examinations, and a cumulative record of reportable events. The data bank should be available on-line to the public, and ease of public use should be a primary criterion in its design. Sample data elements are listed in Attachment I. The cost of operating the licensing system and national data bank could be met by license fees paid by individual license holders and fees paid by interstate transportation companies based on the number of their employees licensed.

> It is absolutely essential that the data be available for press and public scrutiny and that it be organized in a way that makes on-line computer access and searching convenient. Modern computerized database technology makes the achievement of all these objectives easy and economical. There is no need to identify license holders by name in the public data bank; identification by permanent code number is adequate for

> public data analysis purposes. The federal licensing authority would have a complete cross reference file of code numbers, license numbers, and names, and each transportation company would have a similar cross reference file for its own employees.

3. **Reportable Events.** Each federal transportation license holder and interstate transportation company should be required to report promptly to the national data bank, with standard forms, every instance of certain reportable events: arrest on any criminal charge, citation for any automobile traffic violation, suspension of automobile license, safety violations on the job, accidents on the job, specific medical events, substance abuse, completion of substance abuse rehabilitation programs, citation by regulatory agencies for safety or operating violations, etc. The disposition of any reportable event must also be reported. The requirement to make a timely, accurate, and complete report should be given teeth by a criminal penalty for failure to do so. Regulatory standards should be developed that require a fitness hearing for any license holder whose record meets certain standards, together with grounds for suspension or revocation of a license.

> The clear light of publicity may be more effective and less costly than reams of regulations in encouraging adherence to safety rules and sound operating procedures. A history of chronic disregard of rules or a pattern of personal or corporate behavior indicating a need for further scrutiny would be apparent in the cumulative record of the data bank. With such data available, management can be made clearly responsible for continual scrutiny of the fitness of their employees for public trust and can require early programs of counseling and rehabilitation for troubled employees before they cause a catastrophe. ...[T]he traffic conviction record in only one state (Maryland) of the Conrail engineer in the January 4 crash...lists 12 convictions and 2 license suspensions through December 11, 1986; an arrest on December 5, 1986 for drunken driving and running through a stop sign and a red traffic light (actions very similar to what he apparently did a month later on the railroad) is not shown on the record since trial is not scheduled until March 4, 1987. [Trial was delayed until May 1, nearly 5 months after the arrest. At the trial the Conrail engineer pleaded guilty to all charges.] The public cannot understand why a person with a long history of automobile traffic violations, indicating chronic disrespect for laws and rules, should ever be entrusted with operating responsibility in public transportation, which requires rigorous adherence to laws and rules.

ATTACHMENT I

SAMPLE DATA ELEMENTS IN THE RECORD OF A LICENSE HOLDER

Non-Public Data Elements

Name
Social security number
License number
Month and day of birth
Address
Home telephone number
Work telephone number
Name, address, and telephone number of personal physician
Name, address, and telephone number of personal dentist
Fingerprints

Public Data Elements

Permanent code number (linked to license number in separate confidential file)
Position classification code (engineer, pilot, brakeman, barge operator, etc. per separate public file)
Employer identification code (linked to company name in separate public file)
Year of birth
List of minimum qualifications for the operating position, as established by the employer or regulatory body, dates the license holder met each qualification, scores if applicable
Additional courses or tests passed beyond the minimum qualifications, with dates and scores
One record for each routine or special medical exam and hospitalization, as required by the employer or regulatory agency, containing selected data elements appropriate to the operating position, such as blood pressure, pulse rate, reaction to stress test, EKG findings, EEG findings, blood chemistry, levels of specific substances, vision test, hearing test, etc., as well as a limited amount of text for evaluation and recommendations.
One record for each reportable event, including arrest on any criminal charge, citation for any automobile traffic violation, suspension of automobile license, safety violations on the job, accidents on the job, disciplinary action on the job, substance abuse, and similar pertinent events, as well as a limited amount of text to be provided at the option of the license holder. Disposition of any reportable event (such as conviction or acquittal subsequent to an arrest, successful completion of a substance abuse treatment program, return to regular status following disciplinary action, etc.) is also a reportable event.

Senator EXON. The last witness at today's hearing, please come forward, Mr. William Dempsey, President of the Association of American Railroads, and Mr. J.R. "Jim" Snyder, Legislative and Safety Chairman, Railway Labor Executives Association.

Gentlemen, thank you for your patience. It has been a long day. I suspect you had not planned to be here this late. I thought it was important that we make certain that the members who had come from out of town were heard—and since we know both of you are here in town. I must admit that we decided to put you off. And if we could not get you on today, we were going to ask you to come back another time.

But I hope that we can move ahead now. I am waiting for Senator Adams to come in at any time. He has agreed to take over the remainder of the hearings. I was supposed to be in the Armed Services Committee 40 minutes ago.

Without further ado, let us proceed with your testimony. And we will begin with you, Mr. Dempsey. Please submit your written material for the record and, without objection, it is accepted. And we will do the same thing with Mr. Snyder.

I am pleased to thank you for coming back before our committee once again.

STATEMENTS OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS; AND J.R. SNYDER, LEGISLATIVE AND SAFETY CHAIRMAN, RAILWAY LABOR EXECUTIVES' ASSOCIATION

Mr. DEMPSEY. Thank you, Mr. Chairman.

I will not spend any time on the safety record. I would like to ask that my February statement be incorporated into the record by reference. It has all the relevant data.

Senator EXON. Without objection.

Mr. DEMPSEY. There are a great number of proposals here. I count 24 and there may be more. The proposals proliferate exponentially, as far as I can tell, as the safety record of the industry improves.

In the 5 minutes that I have, obviously I cannot touch on all of them. So let me just take a few of the representative ones and indicate in general our position, and I will be glad to respond to any questions.

We do not oppose some of these proposals. For example, the licensing of locomotive engineers, I have to say in all candor that we do not think that proposal is necessary, and we have outlined why in my statement, because we think our training programs and certification programs are excellent.

But I share the view stated in a somewhat different way by the last witness: The railroad industry really does not want to give the public the impression, wrong though it might be, that we are not very safety conscious, and that might be the impression given.

I much prefer Mr. Riley's suggestion, if I understood it correctly, that FRA conduct an investigation to see whether licensing is something that really is useful and what, if any, additional regulations the FRA should promulgate.

We support one proposal, that being FRA's proposal for the ability to levy fines against individuals. I would draw a precautionary footnote there from our perspective. Certainly in cases involving tampering with safety devices or anything that is of that serious a nature, this proposal it seems to me is thoroughly justified.

However, there are myriads of FRA regulations, some of which are very technical, and we are somewhat concerned about interference with the normal grievance procedure and disciplinary procedure and collective bargaining process. And we would ask that FRA, working together with the committee, see if that concern is justified and if there is some way to discriminate among different kinds of violations.

If that is not feasible, then we would of course support the proposal in its entirety.

Most of the proposals we strongly oppose as being not only unnecessary, but very burdensome on the industry and in many cases an intrusion into the collective bargaining process in the guise of safety.

We agree with Mr. Riley altogether that the RLEA proposals are only remotely related, if at all, to safety and they are an effort to bypass, first of all, a regulatory process and bypass the collective bargaining process.

I do not agree with Mr. Riley on his suggestion that management has tried to use the Railway Safety Act as leverage in collective bargaining situations. But I can settle that here and now by making the offer to the unions that, if they will not bypass the regulatory process and come to the Congress with proposals of this sort, we will not either.

There are one or two new proposals. Most of them, however, I have already testified on. The engineer 8-hour call, for example, would interfere in a very serious way with rail operations. We do operate a number of scheduled trains, but also we run a very large number of what are called extra trains.

Most of our bulk commodities travel that way, and we don't know exactly when they're going to go. They go when they are ready.

The employees that are operating these trains must of course have eight hours rest under the hours of service law, but they are then on call. They can get a pretty good idea, I am told, as to when that train is likely to go. But we really do not know.

So it would either represent a great interference with the efficiency of our service, because we would have to hold trains, or we would have to have a lot of extra engineers so that we could man the trains when they are ready to go. We calculate about 5,000 additional engineers, at a cost to the industry of about $250 million a year.

Clearly, that is a burden that is not sustainable.

The Carmen's proposal is an old one, dressed up a little bit. It is an effort to get for carmen the exclusive right to inspect, not to have brakemen inspect. Brakemen have always inspected where carmen were not available. We have a collective bargaining agreement with the carmen that indicates that where there is not enough work for the carmen a carman need not be employed, so this in effect is an effort to get a Federal law or regulation that would override that bargaining agreement and require that carmen be employed even where not necessary.

We oppose the penalty provision by FRA. It is now $2500. They want to take it to $25,000. I would simply point out: the airlines, $1,000; the motor carriers, $2,000.

We oppose the user fee provisions and all of the other RLEA proposals.

My time has expired and I will rely upon my statement.

[The statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY, ASSOCIATION OF AMERICAN RAILROADS

My name is William H. Dempsey and I am President and Chief Executive Officer of the Association of American Railroads. The railroads, which are members of the AAR, employ 90 percent of the workers, produce 93 percent of the freight revenues and operate 85 percent of the line haul trackage in the United States. The Association of American Railroads, welcomes this opportunity to participate in the Subcommittee's oversight hearings on rail safety.

At the hearings conducted by this Subcommittee on February 17, 1987, I presented an analysis of the safety record of the railroads from 1978 through 1985 and I request that my earlier statement be made a part of this record. Since that time additional information for the year 1986 has been made available. Regretably, the preliminary reports from FRA indicate that while the total number of employee fatalities was higher in 1986 than 1985, however, the 1986 level was below all other previous years and still reflects the overall downward trend in employee fatalities.

To put the long term trend of improvement in proper perspective it should be noted that: total railroad related fatalities decreased 34 percent from 1978 to 1986; employee fatalities per million man hours worked declined from 0.12 in 1978 to .10 in 1986; railroad employee fatalities decreased from 131 in 1978 to 63 in 1986; a reduction of 52 percent; total railroad employee injuries decreased from about 64,000 in 1978 to 22,400 in 1986, a 65 percent reduction; and train accidents decreased 77 percent from 1978 to 1986.

By several measures 1986 showed an improvement over 1985:

In 1986 there were 20 percent fewer train accidents than in 1985.

The train accidents per millions train miles decreased over 19 percent.

The employee casualty rate (casualties per 200,000 man hours) declined almost 19 percent.

Total employee injuries dropped from nearly 30,000 in 1985 to 22,400 in 1986. ("Injuries" include relatively minor cuts and scrapes).

As I indicated in my February 17, 1987 statement, the railroads have devoted substantial resources to the significant improvement in the railroad physical plant over the past several years. The railroads' commitment to safety is reflected in the expenditures for capital improvements and maintenance as well as in their intensive employee safety programs.

The Department of Transportation has submitted several legislative proposals to Congress and Senator Lautenberg has introduced S. 1098 dealing with several issues. Additionally, the Railway Labor Executive Association has submitted several proposals, some of which were introduced in the 99th Congress. I would like to take this opportunity to comment on specific provisions in these legislative proposals.

INCREASED PENALTIES

The Administration has proposed a significant increase in level of penalties that could be assessed by the Federal Railroad Administration against railroads for violation of FRA's safety regulations. Penalty levels would be increased significantly under S. 1098. Currently the Federal Railroad Safety Act (FRSA) provides that the penalties assessed shall not be less than $250 nor more than $2,500 for each violation, with each day of a violation constituting a separate offense.

The Secretary recommends that the $2,500 maximum penalty for each violation would be increased to $10,000. However, in addition, a maximum penalty of $25,000 would apply "where a violation has created an especially egregious safety hazard." Under S. 1098 the $2,500 level would be increased to $25,000.

The DOT has suggested that inflation has "eroded the absolute value" of the $2,500 penalty. We cannot disagree with the fact that inflation has occurred and that $2,500 isn't what it used to be. However, the relevant consideration is the fact that the railroads' safety record has been improving dramatically and increased penalty levels are not going to accelerate that improvement. Increased penalty payments can only divert available resources to the Federal Treasury and away from safety related investments. It just does not make any sense for DOT to ascribe the improvement in rail safety to the improved financial activities of railroads since the passage of the Staggers Act and then suggest that safety will be further improved by diverting additional funds through the assessment of higher penalties.

The Department suggests that the $10,000 maximum would be appropriate under FRSA because that is the maximum civil penalty under the Hazardous Materials Transportation Act. However, they fail to acknowledge that under HMTA the civil penalty applies only when a person "knowingly commits an act which is a violation" of the hazardous materials regulations. FRSA contains no such language.

The penalty levels proposed by DOT and in S. 1098 are significantly higher than the penalties applicable in the motor carrier or airline industries. The aviation industry is subject to $1,000 maximum civil penalties for safety violations with each day of a violation constituting a separate offense. (49 U.S.C. § 521) Similarly, when a serious "pattern" of safety rule violations is detected, a motor carrier is subject to a maximum civil penalty of $1,000 for each offense (49 U.S.C. § 521), yet there is a cap of $10,000 for such "pattern". No such cap exists for penalties currently assessed by a the Federal Railroad Administration.

The threshold for application of the $25,000 maximum penalty under the Administrative proposal—"an especially egregious safety hazard"—represents an entirely subjective standard and should be rejected. The Secretary already has significant coercive powers under the Federal Railroad Safety Act of 1970 as amended. Under Section 203 of that Act (45 U.S.C. § 432), if the Secretary determines that:

"* * * an unsafe condition or practice, or a combination of unsafe conditions of practices, or both, create an emergency situation involving a hazard of death or injury to persons, the Secretary may immediately issue an order * * * imposing such restrictions or prohibition as may be necessary to bring about the abatement of such emergency situation."

This authority already empowers the Secretary, without the need for hearings, to impose significant sanctions, in terms of operating restrictions, to correct any "especially egregious safety hazard."

Furthermore, the $25,000 maximum in the Hazardous Materials Transportation Act is a criminal sanction. Any attempt to add a $25,000 penalty to FRSA should be based on the same criteria for establishing criminal culpability.

With all due respect, we suggest that the Secretary's request for increased penalty levels must be viewed in the same light as the request for "user charges." It is simply a revenue producing measure.

LIABILITY OF INDIVIDUALS

Under the Administrative proposal and under S. 1098 the Secretary of Transportation would be authorized to assess penalties against individuals for willful violations of the safety regulations. Under the Administration's proposal the Secretary would be authorized to prohibit employees determined to be unfit to perform safety sensitive tasks from serving in safety sensitive capacities.

The FRA now has jurisdiction over the carriers for enforcement of the safety regulations, and no convincing case has been made that its enforcement program would be enhanced by permitting the Federal government to impose monetary penalties on individual employees for any violation of the FRA's myriad regulations or to disqualify employees from service. The Administration's statement of justification for this expanded authority cites the situations in which an employee willfully disables a safety device on a locomotive or where a supervisor willfully require the operation of a train with a serious safety defect. There may be justification for assessing Federal penalties against individuals under those narrow circumstances, but the authority sought is much broader than that. The requested authority is so broad that the Federal Railroad Administration essentially would take over the railroads' control of job performance and disciplinary procedures

The railroads now have strict rule under which employees are disciplined for failure to adhere to safety requirements. The disciplinary procedures, as structured under the collective bargaining process, are long established and strike a delicate balance between the protection of employee rights and the need for the expectation of reliable job performance. That balance should not be disrupted. Interjecting the Federal Railroad Administration into this process would substantially dilute the railroads' authority and would introduce an entirely new set of labor-management conflicts.

USER FEES

The suggestion that railroads fund the Federal Railroad Administration's safety program represents a distortion of the economic concept of exacting user fees from those who elect to receive identifiable benefits or opt to use public facilities or services. The AAR supports the concept of user charges and encourages the imposition of such charges on voluntary recipients of services or the users of facilities provided by a governmental entity. User fees are based on the premise that the government is offering a service (or a product) that can be accepted or rejected or used to the extent the user finds the benefits to exceed the cost for such use and at a lower price than can be obtained elsewhere. The Secretary's proposal fails to meet these criteria.

DOT's proposal cannot be characterized in any way other than as an excise tax imposed on the production of rail transportation services. The laws and regulations administered by the Federal Railroad Administration have been unilaterally imposed on the railroads, in many cases over the strenuous objections of the railroads. Some of the laws and regulations are redundant in that they were copied from preexisting maintenance practices followed by the railroads. A scheme for recovering the cost of administering these laws and regulations must be seen for what it is—a tax and not a user fee.

The Department cannot quantify any benefits allegedly derived by the railroads and can only describe the relationship between its program and those alleged benefits in the most tenuous way. It is asserted that the FRA is responsible for "reduced personal injuries, property damage, and related tort claims." Any correlation between the Federal Railroad Administration's program and a reduced claims pay-out is coincidental with the individual railroad's diligence in conducting safe operations. We reject DOT's underlying assumption that the Federal bureaucracy is saving the railroad industry from doing harm to itself.

If the FRA were to charge the railroads for the cost of state and Federal field inspections for the safety assessments, then the railroads should have some discretion with respect to the "benefits" they will purchase. That is, if a user charge is to be imposed, permit the railroads to determine if there is a need to supplement their forces with Federal or state inspectors. If railroads are to pay for general safety inspections, let the railroads engage the "services" of the FRA. Similarly, if the railroads are to underwrite the cost of the FRA research and test budget, give the railroads a substantive role in the decision as to what research projects will be undertaken.

If the Federal Railroad Administration is to impose "user fees," structure the program in a manner that gives the recipient of the benefits a clear choice as to the need and value of those benefits. Alternatively, if Congress intends to impose an excise tax to off-set the FRA safety budget, Congress should treat the competing modes of transportation comparably.

USE OF CERTAIN REPORTS, TESTIMONY, AND DOCUMENTS IN PRIVATE LITIGATION FOR DAMAGES

The AAR agrees that the opinions and recommendations expressed orally or in writing by FRA employees or contained in FRA reports and FRA safety assessment reports, grade crossing relative hazard rankings and reports or documents filed with the FRA by railroads in connection with accidents or enforcement proceedings (other than those obtained directly from railroads) should not be admissible as evidence or used for any purpose in law suits for damages arising out of railroad accidents or incidents.

Indeed, the AAR recommends that the provisions of Section 4 of H.R. 1774 be expanded to specifically prohibit the introduction of any portion of FRA accident investigation reports as evidence in law suits for damages. Congress has barred the admission or use of accident reports of the National Transportation Safety Board in law suits for damages arising from the accidents which were the subject of such reports (49 U.S.C. § 1903(c)) and FRA reports of investigation or safety assessments should be afforded the same protections.

It should be noted that Section 132 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (P.L. 100-17) already provides that reports, surveys, schedules, lists or data compiled for a State pursuant to Section 203 of the Highway Safety Act of 1973 will not be admitted into evidence in Federal or State court in an action for damages arising from any occurrence at a location mentioned or addressed in such documents. (49 U.S.C. § 409).

REPEAL OF THE OLDER RAILROAD SAFETY LAWS

The Department of Transportation has recommended the repeal of those safety statutes in effect when the Federal Railroad Safety Act was enacted in 1970. Under this proposal the Secretary would be required to issue regulations continuing the substantive provisions of those laws by the date set for repeal.

The AAR does not object to the repeal of the older safety laws as proposed. The authority granted the Secretary under the Federal Railroad Safety Act is sufficiently broad to permit regulatory coverage of the subject matter encompassed within those laws. With the requirement that the Secretary adopt the substantive provisions as regulations there will be no lapse in coverage.

As noted in the Secretary's recommendation, the preemptive effect of the older safety laws is far broader in scope than the preemption provision contained in the Federal Railroad Safety Act. Congress should make it abundantly clear that there will be no erosion of the preemptive effect of these older statutes.

LICENSING OF LOCOMOTIVE ENGINEERS

On its face the proposal to require the Federal licensing of locomotive engineers appears to be reasonable. Commerical and private airline pilots and merchant mariners are licensed—why not railroad train operators? Without further analysis the proposal sounds reasonable and we do not oppose it. But, due to the circumstances that prevail in our industry, I would say that we do question the need for, and benefit of, federal licensing. Some effort must be made to take a look at the cost of creating a federal bureaucracy to administer and monitor training, testing and licensing and to examine the existing training, testing and certification programs.

The aviation and maritime industries have never confronted the need to qualify their pilots or mariners in the absence of a federal licensing regime. The railroads have operated for about 150 years without a federal licensing program and have thus developed their own training, testing and certification programs. Faced with the need to have highly capable locomotive engineers the railroads have individually established their "licensing" programs. While each railroad operates independently the licensing or certification programs are surprisingly similar.

The proper qualification of locomotive engineers is extremely important and the railroads have carefully structured their qualification programs to include training, testing, certification, re-testing, re-training and proficiency observations.

Candidates for locomotive engineers are generally selected from train service employees who demonstrate dependability, competence in their jobs and a willingness and ability to undertake additional responsibility. These candidates must past company physical examinations, that involve standards for sight and hearing, as well as cardiovasculary, respiratory and nervous systems. Physical re-examinations are scheduled periodically thereafter and upon return to service following furloughs.

Locomotive engineer candidates undergo a combination of classroom training that usually involves computer simulated trips with a "train dynamics analyser." The trainee must attend air brake and train-handling classes and pass examinations. They also must attend operating rules classes and pass an examination on the company's book of operating rules. This involves total familiarity of the wayside signal system. Similarly they must demonstrate a knowledge of the company's safety rules and policies as they apply to the job.

Even after the extensive classroom, filed and train-handling instructions, the candidate is not certified as a locomotive engineer. The candidate is required to make a specified number of trips over the specific territory for which he intends to be qualified and demonstrate a familiarity with the physical characteristics of that segment of the railroad including grades, curvature, signal and defect detector locations, track layout, road crossings, and restricted clearances.

The final step is to operate a train under the supervision of a road foreman or other qualified supervisor. Even then the candidate is only qualified as a locomotive engineer on the segment of the line for which he was tested. Qualification to operate on other segements or divisions of the railroad can only be obtained if the locomotive engineer makes a set number of supervised trips over the new segment of new division.

Following certification, locomotive engineers must attend annual or bi-annual rules classes and pass examinations. Additionally, the railroads conduct operational tests and inspections. This periodic re-training and retesting ensures that the locomotive engineers have retained the necessary qualifications.

Importantly, the railroads maintain extensive records on each locomotive engineer. The records contain the essential information on training, testing and qualifications. The employee receives a written acknowledgement of his authority to operate a locomotive.

Significantly, each railroad takes great care to train and test locomotive engineers from other railroads which might operate over its lines. Where one railroad has trackage rights over another railroad, for example, the "foreign" locomotive engineer would be required to demonstrate a thorough knowledge of the operating rules, signal system and the physical route characteristics of that segment of line of the "home" road over which the "foreign" train is to be operated.

While there is no Federally imposed licensing requirement for locomotove engineers, it is misleading to suggest that locomotive engineers are not trained, tested and certified. Indeed, the individual railroad locomotive engineer qualification programs represent a very effective licensing system.

The railroads support and share the objective of assuring that the operators of trains are trained, have the necessary qualifications and have satisfactorily demonstrated train-handling ability. We think the railroad certification systems do that and more!

WRITTEN CERTIFICATION OF MAINTENANCE, TESTS AND INSPECTIONS

Section 3 of S. 1098 would require written certification that maintenance, pre-departure tests and inspections are performed by qualified personnel before a train departs. It would also require that the Secretary of Transportation establish a plan to ensure that all maintenance, pre-departure tests and inspections are performed and certified. Civil and criminal penalties would be established for non-compliance.

In 1978 the Office of Technology Assessment criticized the legislative process of reacting to preceived safety hazards by the passage of specific laws without a full understanding of actual circumstance and without considering alternative courses of action. Section 3 of S. 1098 represents such a reaction to the train accident on January 4, 1987 involving an Amtrak passenger train and Conrail locomotive.

First, without passing judgment on the culpability of any railroad employee involved in the recent train accident, it should be clear that Federal laws, strict regulations, comprehensive railroad operating rules and common sense, cannot overcome the reckless disregard for safety by an employee who willfully violates established requirements.

Existing regulations administered by the Federal Railroad Administration impose comprehensive requirements for maintenance, pre-departure tests and inspections. Several of these requirements are already coupled with reporting and recordkeeping requirements.

In addition to the biannual, annual and period (92 day) tests of locomotives under the Locomotive Inspection Act, existing Federal regulations also require that daily inspections be made of each locomotive and that a report be made of such inspection. The report must contain the name of the carrier, the initials and number of the locomotive, the place, date and time of the inspection, a detailed description of the non-complying conditions and the signature of the employee making the inspection. The report must be filed and retained for at least 92 days (the time interval for "periodic" inspection) and a record is to be maintained on each locomotive showing the place, date and time of the previous inspection. (49 C.F.C. § 229.21)

Any locomotive with a non-complying condition must be tagged with detailed information concerning the defect. It cannot be used as a lead locomotive and can only be move as a lite locomotive on a dead locomotive after a qualified employee has determined that it is safe to move and has determined the necessary restrictions. The locomotive engineer in charge of the movement of the defective locomotive must be informed in writing of the presence of the non-conforming locomotive in the consist and of the operating restrictions (49 C.F.R. § 229.9)

Under the Signal Inspection Act current regulations provide for the departure testing of the automatic train stops, train control, or cab signal apparatus on each locomotive by operation over track elements, operation over "test circuit, use of portable test equipment or use of an on board test device." If the departure test is made by an employee other than the engineer, the engineer must be informed of the results of the test and a record of the test is to be made and kept. (49 C.F.R. § 236.587)

Federal regulations contain detailed requirements for the inspection testing and maintenance of the air brake systems on locomotives and cars. These regulations spell out the specific testing and inspection procedures to be followed when the train is made up at the initial terminal. The regulations specifically require that the test and inspection is to be made by a qualified employee and that a qualified employee participating in the test notify the engineer that the initial terminal test has been satisfactorily performed. This notice must be provided in writing if the train crew reports for duty after the qualified person goes off duty. In any event, the notice must be in writing if the train that has been inspected is to be moved in excess of 500 miles (49 C.F.R. § 232.12)

Under the Freight Car Safety Standards there is a required pre-departure inspection of each car placed in a train to assure compliance with the detailed component standards contained in the regulation. Each railroad must designate persons qualified to make the inspections and must maintain a written record of each designation in effect, including a record of the basis for such designation. Any defective car may not be moved to another location unless the qualified inspector determines that it is safe to do so and a tag or card is placed on the car indicating the specific defect. Notice in writing of the presence of the defective car and of any operating restrictions determined to be necessary by the qualified inspector must be given to the person in charge of the train in which the tagged car is to be moved. (49 C.F.R. Part 215)

There is no justification for imposing yet another layer of regulation over that which currently governs the pre-departure testing and inspections. Existing regulations adequately cover the field. Additional certification and record keeping requirements will not prevent rule violations by employees intent on ignoring existing requirements.

CLASSIFICATION AND RECORDS OF SAFETY DEFECTS

Section 5 of S. 1098 would require the Secretary of Transportation to record and classify all safety defects found by FRA inspectors or State inspectors and to record the timeliness and degree of remedial action taken to correct reported defects and violations. This provision would appear to impose a substantial yet unnecessary burden on the Federal Railroad Administration. The AAR would defer to that agency to provide an assessment of the impact such a requirement would have on its operations.

PERMITTED ABSENCE OF EMPLOYEES FOR SAFETY REASONS

Section 6 of S. 1098 represents the potential for a gigantic step backward in the collective fight against substance abuse in the railroad industry. The mere suggestion that employees may lay off from work because of drug impairment sends a signal that drug use is acceptable even though that certainly is not the intent of the sponsors of the bill. It is stated that the intent of the provision is to encourage labor and management agreement on the adoption of Operation Redblock, but, by its terms, Section 6 misses the mark entirely.

The Federal Railroad Administration has already been on record as encouraging the adoption of Operation Redblock in the collective bargaining process and no additional legislation is necessary to encourage the agency to embrace that concept. Furthermore, legislation which suggests that Operation Redblock is the single, most effective way to encourage employees to seek assistance is inappropriate.

Existing regulations require that all railroads have programs that permit employees to obtain counseling and treatment for drug or alcohol dependency when self-referred or referred by others. This assistance is provided without penalty to the employee. Additionally, all railroads provide counseling and treatment for employees detected to be under the influence of alcohol or drugs while on duty. However, those railroads which do not participate in the Redblock program reserve the right to take disciplinary action in those cases in which the employee attempts to perform his duty while impaired in violation of Federal regulations and company rules. The Secretary should not be authorized to mandate the Redblock program as the only method of dealing with substances abuse in the workplace.

EMPLOYEE PROTECTION

Under Section 7 of S. 1098 the Secretary of Labor would be directed to adopt regulations defining "protected activities" of employees and to establish a procedural mechanism for employees seeking redress for alleged discrimination arising from the employees engaging in any of the protected activities. Those protected activities would include the reporting of violations of safety laws to FRA and testifying in any proceeding conducted for the enforcement of those laws.

Section 212 of the Federal Railroad Safety Act of 1970, as amended, (49 U.S.C. § 441) currently prohibits carriers from discharging or in any manner discriminating against employees for reporting safety defects to the FRA or testifying in any safety enforcement proceeding. That Act also provides similar protection for employees who refuse to work when confronted by hazardous conditions in the workplace. Any dispute between the employee and the employer or any grievance or claim asserted by the employee is to be resolved by the Adjustment Board or other board of adjustment created under Section 3 of the Railway Labor Act (45 U.S.C. § 153).

No serious assertion can be made that the grievence procedures under the Railway Act have not been followed in an even handed and fair manner. No serious charge can be made that rail employees have been denied substantive or procedural protection under the Railway Labor Act. We are aware of no circumstances which remotely suggest that the protections afforded under Section 212 of FRSA or under the Railway Labor Act are inadequate or disadvantage employees.

There simply is no justification for limiting the coverage of the Railway Labor Act in this manner. It is particularly objectionable when prompted by unsupported allegations and innuendo.

RLEA'S 1987 RAILROAD SAFETY PROPOSALS

Grade crossing signal system safety

"The Secretary shall within 180 days after the enactment, issue regulations to ensure the safe maintenance, inspection and testing of signal systems and devices at railroad/highway grade crossings."

It is not necessary to direct the Secretary of Transportation to issue rules, regulations and standards governing the maintenance, inspection, and testing of highway grade crossing warning devices. Adoption of such regulations and standards would not improve grade crossing safety.

The Federal Railroad Administration conducted hearings in July 1984, and again in January 1985, on the issue of grade crossing safety generally and on the specific maintenance and inspection practices of the nation's railroads. The facts presented at the hearings showed that of 4,634 grade crossing accidents in the first nine months of 1984, in only two cases were the active warning devices not functioning as intended. In other words, in only four-one hundredths of one percent of the cases did the device fail. Significantly, in those two cases the failure of the devices may not have been the direct cause of the accidents.

The record complied by the FRA in 1982 and 1985 is similar to the date gathered and analyzed by the FRA in a previous rulemaking proceeding. In 1978, the FRA terminated that earlier proceeding, concluding that the issuance of regulations governing the inspection and maintenance of highway grade crossing warning devices could not be justified.

Grade crossing devices are effective, reliable and properly maintained by the railroads. Because of this reliability, the installation of additional devices (primarily under FHWA's Grade Crossing Safety Improvement Program), and efforts such as Operation Lifesaver, the most significant change in grade crossing safety since 1978 has been the dramatic decline in the number of accidents.

Power brake and freight car inspection standards

"The Secretary shall, within 180 days after date of enactment issue regulations to define qualification standards for employees who conduct power brake inspections and railroad freight car inspections."

"This provision stems from a request by the Railway Labor Executives Association for Congressionally mandate work assignments. The RLEA is not as concerned with the qualifications of the employees performing the inspections and tests as with the craft to which this work is assigned."

The regulations governing the test and inspection of air brakes as administered by the FRA have always required that initial terminal road train air brake tests be performed by "qualified persons." In an agreement reached between rail labor and management and accepted by the FRA, the regulations were amended to state that "Where a carman is to perform the inspection and test under existing or future collective bargining agreements, in those circumstances a carman alone will be considered a qualified person." Having agreed that collectively bargained agreements will govern the questions of whether the tests and inspections will be performed by carmen, the RLEA is now asking Congress to intercede, and by legislation, create a vehicle for a regulatory proceedings in which to override provisions in existing collectively bargained agreements.

For years railroads all across the country have assigned the task of performing initial terminal road train air brake tests and inspections to employees other than those from the carman's union under certain conditions. Trainmen are qualified to perform these tests and inspections at many locations. Under the terms of a National Agreement reached in 1964 and amended in 1975, it is not necessary to employ carmen at a facility if there is not a sufficient amount of work to justify employing a carman. The terms of the agreement provided for the handling of any disagreement between management and labor over the question of whether or not there is sufficient work to justify employing a carman. At the request of the General Chairman of Carmen a joint check of the available work can be made. If this does not result in an agreement, the matter can be adjudicated under the grievance procedures established under the Railway Labor Act. In an agreement beteen the railroads and the Brotherhood of Railway Carmen—Division of BRAC dated November 19, 1986, these same terms and procedures were agreed upon and continue in effect. The RLEA is seeking regulatory action to require the employment of carmen where, by definition, there is not sufficient work to justify the employment of carmen.

Similarly, with respect to inspections made pursuant to freight car safety standards, the FRA regulations already deal with the necessity for having qualified inspectors. The regulations specifically require that each railroad designate persons qualified to inspection railroad freight cars. These persons must have demonstrated to the railroad a knowledge and ability to inspect cars for compliance with the standards and to make determinations regarding the safe movement of defective cars where conditions require such movement. Railroads are required to maintain written records of each person so designated and a written record of the basis for such designation (49 C.F.R. § 215.11).

There is no justification offered for this provision. It is merely an attempt to establish a forum outside the collectively bargained agreements for airing disputes concerning craft assignments.

Training and work standards for dispatchers

"The Secretary shall within 180 days after date of enactment, issue training and work standards for those involved in dispatching trains."

There is no demonstrated need for the establishment of regualtions governing the training of railroad train dispatchers. All too often Congress has been requested to enact statutory solutions for "problems" which are nonexistent. These Congressional mandates unnecessarily divert the FRA's and the industry's limited resources from more productive programs.

Railroads currently have candidate selection priorities and training programs for ensuring that employees are capable of performing the tasks of train dispatchers. Railroads prefer to select train dispatcher candidates from employees who have held previous transportation department positions such as trainmen, switchman, block or control operators. It is desirable that candidates have experience in the situations affecting the movement of trains, operating rules and physical characteristics of the railroad. Physical qualifications for train dispatchers are not as stringent as those for locomotive engineers; however, each candidate must have his medical history reviewed and be given a thorough medical examination.

Candidates are given instructions in classroom training sessions as well as in the dispatcher's office. Candidates do not receive approval simply because they have successfully completed the training program. An assessment must be made and qualified dispatchers with proven track records must determine that each candidate is qualified. The assessment is made in the course of the candidates's assignment to a dispatch office to work under the direct supervision of an experienced dispatcher.

After a candidate has been judged ready to handle his own assignment by the Chief Dispatcher there is a continuing process the monitoring performance. In addition to the supervision by the Chief Dispatcher, they are subject to unannounced efficiency tests. They must also attend operating rules review classes and pass examinations which test the dispatcher's knowledge of these rules.

The FRA already has the authority to establish employee qualification standards for safety purposes. It is not necessary for the Congress to second guess the agency on the basis of RLEA's request, and force the agency to conduct a formal investigation into the subject ot dispatcher training.

PROTECTION OF EMPLOYEES AGAINST DISCRIMINATION

(a) Any harassment claims arising under railroad safety laws shall be expedited, and

(b) If the harassment does not result in a discharge or a suspension then the agrieved employee may receive punitive damages.

If adopted, the remedy in paragraph (b) should be limited to $2,500.

STANDING TO REQUIRED PERFORMANCE OF NONDISCRETIONARY ACTS

(a) Any employee or the authorized representative for such employees may sue the Secretary to require the Secretary to perform any act or duty which is not discretionary and which is related to the enforcement of the railroad safety laws, if there is a danger of serious injury or death to the employees.

(b) No action may be brought before giving the Secretary 60 days notice of the failure to perform.

In 1980 FRSA was amended to permit an employee or an authorized collective bargaining representative to seek judicial review of the failure of the Secretary to issue an emergency order under section 203(a). Thus, the railroad employee is not without access to the courts when such employee may be exposed to physical injuries in the course of his employment because of the Secretary's failures, without reasonable risk to issue an emergency order.

The proposed amendment would create a new enforcement mechanism for alleged violation of the regulations with no guidelines or criteria to guide such enforcement. Presumably then, railway labor could bring an enforcement action even in cases in which the Secretary has affirmatively determined that no FRSA violation has occurred or that an enforcement action in the circumstances is unwarranted. No citizen has standing to challenge law enforcement policies of a public agency no matter how interested the citizen may be in those policies. A local district attorney may exercise his prosecutional discretion and that discretion cannot be challenged by one who is neither prosecuted or threatened with prosecution. The same principle must apply to the enforcement policies of the Secretary in the enforcement of the railroad safety regulations. As a result of these shortcomings, a new enforcement "agency" would be created totally without any direction or oversight from the FRA.

The existence of multiple agencies opens the way for dozens of interpretations of railroad safety rules, regulations, and standards; perhaps one interpretation for each collective bargaining representative. It would be impossible to safely operate a railroad system on the basis of multiple enforcement policies and rules interpretations. Uniformity of regulation is at least as important to safety today as it was in 1970 when the FRSA was passed. For the sake of safety, the exclusive allocation of rail safety enforcement responsibilities to the Secretary of Transportation and the states should not be disturbed so as in any way to diminish that essential uniformity.

ACCIDENT REPORTS

RLEA requests that Congress specifically provide that rail employees or their collective bargaining representatives be permitted to submit comments contradicting the railroads' report on the causes of individual accidents.

Current law already provides that any person who knowingly and willfully makes a false entry in any record or report or files a false report should be fined not more than $5,000 or imprisoned for not more than two years or both. Additionally, the railroad must answer for all accidents whether caused by track, equipment or human factors and, thus, the railroad has not incentive to identify "human factors" as the cause of an accident in lieu of track or equipment causes.

REGULATION OF ALL VEHICLES

RLEA proposes that all vehicles used by railroad workers in employment be covered by federal safety standards.

Highway vehicles are already subject to federal and state regulation and railroad rolling stock are already subject to FRA regulation. On-track equipment, such as that used by the maintenance-of-way employees, is so specialized that regulation is not practical. New developments and innovation are necessary to meet localized needs and regulation could hamstring the development of more efficient machines necessary to increase productivity.

CALL TIME AND LIMITATIONS ON "TOURS-OF-DUTY"

RLEA requests that locomotive engineers be given at least an 8 hour call time and that tours of duty be limited to 22 in any 30-day period.

This represents a request for legislative interference in the collective bargaining process. Duty assignments, including pools of employees and extra employees subject to call and "tours of duty," are part and parcel of the complex mix of contract provision including rates of pay, basis of pay and mileage allowed monthly. The RLEA requests would result in lower pay and dislocation for individual employees and would require the unnecessary increase in the number of locomotive engineers employed by railroads. Should this amendment be adopted, it is estimated that an additional 5,000 locomotive engineers would be required to handle the present level of traffic.

The proposed eight-hour call time would have a severe economic impact in the railroad industry, a impact so severe that its economic viability would be in doubt. A large percentage of freight train movements are scheduled, but are subject to ever changing circumstances, which require flexibility in calling crews for duty. Most of the bulk commodities, such as coal, ore, stone and grain, are operated as extra trains and are called on an as-needed basis. A requirement to notify a crew eight hours in advance would be feasible and would delay shipments and severely affect car utilization. The only way to meld the operational realities with the eight-hour call requirement would be to employ a significantly greater number of employees, and then to pay many employees for not actually performing duties. The proposal would also seriously disrupt service with the very real potential for the loss of business.

The eight-hour requirement often would result in the calling of a crew of a given terminal prior to the departure of the train from the preceding crew change point. Any unexpected operational problem delaying the arrival of the train would result in the called crew having to wait for the train to arrive while receiving pay just for waiting. The on duty time spent waiting for the train would constitute "hours-of-duty" under the Hours of Service Act and the crews' scheduled run might be curtailed. This would require the calling of a relief crew—presumbly on eight hour's notice—and would further delay the movement of the train. This hypothetical example is not just idle speculation but represents the realities of railroad operations.

In addition to the overall delays in railroads service the eight-hour call requirement would result in severe disruption in plant switching operations. The needs of shippers change dramatically in very short periods of time. In many instances, it is absolutely impossible to predict crew requirements eight hours ahead if time to respond to customer needs.

While the eight-hour call proposal applies to engineers only in practice, the calling of the train and engine service crews must be integrated, and thus the effect of the rule would have a direct impact on the scheduling and under-utilization of train crews. For example, if an engineer becomes sick or otherwise incapacitated immediately prior to duty time or immediately after arrival on duty, the remainder of the crew would be paid but would not perform the trip for which called, because there would be an eight-hour delay while the replacement engineer was called.

The rule would also have an adverse impact of the employees and their pocketbooks. Crews would be away from home longer as a result of the eight-hour delay at the away-from-home terminal. Many employees attempt to increase earnings by working more than a single tour of duty in 24 hour period, yet this would be precluded under the eight-hour rule.

Unless regularly assigned to a yard, local or district run employees are generally given a two hour lead time. Employees are aware of their positions on the call list and can generally anticipate within a given time frame when they will be called for duty. They are assured of a period of rest following an on duty time under the Hours of Service Act and know that they will not be called during that time. If there is any question concerning their status, employees can and do call the railroad to determine whether operational problems, availability of traffic, or other causes might delay the anticipated call time. Additionally, under emergency conditions such as derailments, when a crew is needed to move wreck cleaning equipment the employees could be called for duty on short notice. Certainly Congress would not hamper the railroads' ability to respond to emergency situations.

The term "tour-of-duty" has no precise definition in terms of number of hours worked or number of miles traveled and thus the proposed limitation of 22 tours of duty within any 30 day period is meaningless as a safety standard. For example, a tour-of-duty could be as short of time as 3 hours or as long as ten hours. It could represent a trip of less than 100 miles or a trip in excess of 250 miles. Limiting each of those "tours" to 22 per month would still result in a wide variation in the number of hours worked or miles traveled and thus can not be advocated in the name of safety. The only known effect of the proposal would be to increase the union rolls with more, but lower paid, engineers.

Under the collectively bargained agreements the duration of a tour-of-duty for a job assignment is directly related to the number of tours-of-duty which might be experienced in any given time period. Existing agreements do not refer to "tour-of-duty" but have mileage restrictions that effectively limit the number of tours-of-duty in a manner directly related to the employees work load. An arbitrary limitation of 22 tours in every 30 day period would, in many cases, not affect employees assigned to positions involving long trips but would unfairly limit employees assigned to on shorter runs. Such a rule would substantially reduce the wages of most locomotive engineers.

CAUSE OF ACTION FOR DRUG TESTING BEYOND SCOPE OF FEDERAL REGULATIONS

RLEA has requested the establishment of a federal cause of action for employees tested for drugs or alcohol outside the parameters of federal regulation or railroad rules, with the remedy encompassing compensatory damages, punitive damages, court costs and attorneys fees.

The control of drug and alcohol use in railroad operations is of great importance and it would be a mistake to inhibit the implementation of testing by railroads under the Federal program. The testing parameters set forth in the Federal program are stated in terms of circumstances under which testing is required (post-accident) or when the railroad has discretion (reasonable cause). Any testing performed under circumstances other than that set forth in the federal program does not necessarily result in harm or injury for which there should be compensatory or punitive damages. Furthermore, railroads are now subject to penalties administered by the FRA for testing in violation of the Federal regulations.

REGULATION GOVERNING MAINTENANCE-OF-WAY WORK

RLEA has requested that Congress direct the Secretary of Transportation to adopt a series of regulations affecting the conduct of repair and maintenance work on railroad track and bridges and the operation of trains and other equipment associated with such work.

The proposals are based on the untenable premise that railroads do not follow safe practices in the maintenance and repair of track and track structures. The Federal Railroad Administration already has ample statutory authority and has seen fit not to exercise that authority in light of the lack of need. Congressional direction to regulate where no regulation can be reasonably justified may create jobs, but it is a form of economic regulation unrelated to safety.

Following is a brief response to the specific proposals:

(a) Standards for bridge safety equipment and boats.

Use of nets, safety lines and boats must be dictated by unique local circumstances and not susceptible to standard requirements. Coast Guard regulations already set safety standards for the operation of boats.

(b) Walkways and handrails on all bridges and trestles.

Many bridges and trestles have been so equipped where necessary for safety. Railroads must have flexibility to avoid creation of an attractive nuisance in appropriate situations. A blanket requirement would be prohibitively expensive. A recent survey estimated the cost to be in excess of $900 million.

(c) Employees to be "completely protected" by a separate compartment from tools in vehicles.

Configuration of many vehicles makes it impractical to completely separate persons and equipment. Carrier rules provide for the safe securement of tools and equipment. Most of the maintenance-of-way vehicles are equipped with a cab capacity sufficient to accommodate maintenance workers, therefore, tools and equipment are separated from the employees. Smaller on-track vehicles would be totally outlawed under this proposal.

(d) Require that all on-track equipment activate signal and crossing apparatus.

On-track maintenance-of-way equipment have much shorter stopping distances than trains and thus it is not necessary for crossing signal activation. Activation of crossing signals by extremely slow moving maintenance equipment would actually send a "false" signal to the motorist inviting disregard of crossing signals. Furthermore, most on-track vehicles are not heavy enough to assure a good shunt of track necessary to activate the signal system. Carrier rules provide for the safe passage of these vehicles over crossings at grade.

(e) Standardized control of train operation and speed through work areas.

This would result in an arbitrary slow down in train operations. Existing regulations now provide the frame work for site-specific determinations on train operations during restoration and renewal of track. Where maintenance-of-way work is being performed in multiple track territory all railroads require that passing trains reduce speed and require the frequent sounding of the whistle. Maintenance crews also position a flagmen a sufficient distance from each end of the work area to notify the workers of approaching trains.

(f) Standard restrictions on use of camp cars.

This attempt to equate camp cars to permanent crew quarters ignores the temporary nature of maintenance-of-way housing and would unnecessarily restrict use of camp cars in many circumstances. Additionally, the tracks occupied by camp cars are locked or protected by portable derails and afforded protection equivalent to that intended under FRA's blue flag requirements.

I appreciate the opportunity to address these legislative proposals and want to reiterate the conclusion contained in the 1978 report of the United States Congressional Office of Technology Assessment which was critical of the legislative response to perceived hazards in the railroad industry. That report concluded that, "[t]he existing federal safety laws, taken as a whole, provide sufficient statutory authority to deal with the existing hazards of railroad operations." For the most part, the pending proposals do not identify existing conditions which alter that conclusion. Indeed, the facts before Congress show that the safety record of the railroads is improving.

Senator EXON. Thank you very much, Mr. Dempsey.

Mr. Snyder.

Mr. SNYDER. Thank you, Mr. Chairman and members of the committee and the staff. We appreciate the opportunity to come before this committee, on rail safety. Mr. Larry Mann, who is here with me today, was also present with me at the hearings on the Rail Safety Act in 1970.

I am somewhat confused about the testimony that has been presented here by FRA today, that rail labor has not done anything, and has not been cooperative. I will not take the hour and a half that Mr. Riley took in making his presentation up here. I think on the Senate floor that would be called a filibuster.

I wish to congratulate and commend the chairman and the staff of this committee. For the first time in the 15 years that I have been chairman of the Rail Safety Committee for RLEA this is the first time they have asked the crafts that operate the trains to come in here and tell their story.

We appreciate this very much. You have heard the witnesses, and I am not going to be repetitious. However, there are two or three things that I feel require comment.

First of all, Mr. Riley commented as had Senator Kasten, who I regret is not here now, on the 69 alleged cover ups of the so-called whistles in the engines. I would request from this committee, Mr. Chairman, information regarding the incidences and what discipline was applied in each one of those cases.

Mr. Riley has stated reports were made to the carrier when those incidents were detected. We on the Rail Safety Committee would like to have copies of these reports so as to insure full cooperation on this matter.

Mr. Riley has made several charges which are unjustified, and are not true. He stated that we have not been cooperative. In fact, we have cooperated with the FRA; attending hearing after hearing, and filing petitions long before Mr. Riley became head of the FRA, and all those petitions have been denied.

So the only place that rail labor can get any help is right up here on this Hill. This is evidenced by RLEA's proposed amendments and all others previously enacted by Congress.

Mr. Riley elaborated on the rail crossings. Rail labor got the first money for the carriers on the railroad crossing issue.

Let me say this. We have before you, Mr. Chairman, several issues. Many of these issues have been heard before the House in H.R. 2372, and reported on by the committee, and unanimously approved by the whole House, and then sent to you. Nothing, however, has been done for two or three years in the Senate.

I also wish to commend the committee on recognizing these issues. Several of the issues which we request you take action on reflect our effort to improve safety in the industry. You should realize that the costs only reflect one or two of the accidents. In my opinion the costs are not so prohibitive that they would prevent our getting everything we are asking for.

One example is the inspections. I am going to report on Mr. Dempsey and Mr. Johnston on this. Mr. Riley stated that with regard to the collective bargaining issues, that negotiations should be attempted, when at the same time there are these practices, especially the ones that passed the House and have been pending before the Senate committee for two years. Before we even came to the Hill over here, Mr. Mann and I sat down with Mr. Dempsey and Mr. Johnston and went over all of these.

They said: We cannot support any of them; our hands are tied; we cannot do anything about it. All this was done prior to coming to the Hill. I want to say at the outset, I have never dealt with two finer people in Washington, DC, than Mr. Dempsey and Mr. Johnston.

On the subject of negotiations, in 1981, Mr. Johnston came to me—and realize that the real problem is that the people out in the field do not pay a damn bit of attention to them.

Mr. Johnston wanted the power brake law changed, which was a justified request. We sat down for several days and worked to help the carriers, to make them more competitive and get the trains over the road faster, etc.—with the clear understanding that there would be a thorough inspection on the local level before each train departed the terminal.

Well, this would have been an improvement over the then existing practice, so we accepted it. We agreed to extend the inspection from 500 to 1,000 miles, with the understanding that the engineers and the crews would be notified that that train had been inspected.

So we sat down, in good faith, and worked out what I thought was a very reasonable agreement.

The FRA assured us that they would have regional meetings at the big terminals all over the country, to show the employees how this inspection was going to take place, and how it would operate between the FRA and the carriers as well as between the employees and their representatives.

This never took place. Just as soon as the ink was dry on that contract, Mr. Chairman, the railroads violated it. They laid off carmen, and they have not inspected the trains.

You have heard the prior testimony, and that is the reason we are back up here. That is the reason these witnesses are here today, to point this out.

So talking about sitting down across the table and working things out, rail labor has done that in good faith. Mr. Dempsey and Mr. Johnston did negotiate in good faith, but the people in the field say, "the people in Washington do not tell us what to do." I get calls about it all the time.

Allow me to say this. Mr. Riley has been covering up today, making it appear as though he's done a good job in carrying out his responsibilities, on administering the existing Federal laws such as hours of service, harassment, rules and regulations, hazardous materials operations, and all of the things that are under his jurisdiction.

Time will not permit us to go into answering a lot of those issues raised by Mr. Riley's questions. However, we certainly will file with the committee and the staff our reaction to these allegations which were made today, and which are very untrue, Mr. Chairman.

In closing, I would like to ask you, the chairman of this committee, to protect these witnesses testifying here today. They have taken great chances by appearing before you.

They have come here today to testify in good faith as to what the facts are. We must protect these witnesses, not only because we do not want them to get fired or anything else, but also because they are good employees and they want to operate a safe railroad.

Therefore, we would appreciate any way that you can protect them.

Thank you very much.

[The statement follows:]

STATEMENT OF J.R. SNYDER, RAILWAY LABOR EXECUTIVES, ASSOCIATION

My name is J.R. Snyder. I am the National Legislative Director of the United Transportation Union. I am appearing today as Chairman of the Safety Committee of the Railway Labor Executives' Association. Accompanying me is Lawrence M. Mann, attorney of RLEA in this matter. The RLEA represents all the crafts of the railroad workers in this country, and the names of the constituent organizations are on record.

As you know, on February 17, I testified before your subcommittee on the RLEA's safety proposals. However, most of that hearing was devoted to alcohol and drug testing, and very little attention was given to our amendments. These amendments to the safety laws are among the highest priority of rail labor in this Congress. We strongly urge your favorable consideration of each of our amendments. In summary the RLEA's proposals are as follows:

1. The Secretary shall, within 180 days after date of enactment, issue regulations to ensure the safe maintenance, inspection and testing of signal systems and devices at railroad/highway grade crossings.

2. The Secretary shall, within 180 days after the date of enactment, issue regulations to define qualification standards for employees who conduct power brake inspections and railroad freight car inspections.

3. The Secretary shall, within 180 days after the date of enactment, issue training and work standards for those involved in dispatching trains.

4. (a) Any harassment claim arising under the railroad safety laws shall be expedited; and

(b) If the harassment does not result in a discharge or suspension, then the aggrieved employee may receive punitive damages.

5. The Secretary shall not disclose the name of any employee who has provided information with respect to an alleged violation of the FRA's safety laws or regulations, except to the Attorney General upon prosecution of a violation.

6. Any employee, or the authorized representative for such employee, may sue the Secretary to require the Secretary to perform any act of duty which is not discretionary and which is related to enforcement of the railroad safety laws, if there is a danger of serious injury or death to the employees.

No action may be brought before giving the Secretary 60 days notice of the failure to perform.

7. The Secretary shall evaluate the employee assistance program with respect to alcohol and drug abuse run by Conrail.

8. In all accidents/incidents where a railroad assigns human error as a cause of an accident, the said employee (or collective bargaining representative) shall be permitted to state on the form mailed to FRA what he or she determines to be the contributing factors of an accident/incident.

9. All vehicles used by railroad workers in employment shall be covered by federal safety standards.

10. A railroad shall be prohibited from allowing or requiring a locomotive engineer to work more than 22 tours of duty in any given 30-day period, and be given 8 hours calling time.

11. In all cases where an employee is tested for alcohol or drugs in violation of the federal regulations or a railroad's own rules, the aggrieved employee shall be permitted to bring an action against the railroad for compensatory damages, punitive damages, court costs and attorney's fees.

12. To protect Maintenance of Way Employees:

(a) There should be standards for bridge safety equipment, such as nets, safety lines, and in some situations, the requirements for safe boats.

(b) All bridges and trestles should have standards for safe walkways and handrails.

(c) As previously mentioned, there should be safety standards for vehicles used by all employees at work. In particular, in vehicles used by Maintenance of Way employees, the workers should be completely protected by a separate compartment from tools and hazardous materials in the vehicle.

(d) On-track equipment should not be insulated so as to activate signal and crossing apparatus

(e) There should be standardized blocking procedures in effect for work areas, and trains must be required to reduce speeds when passing a work area or when adjacent to one.

(f) The safety procedures afforded to other crafts under the Hours of Service Act when campcars are required to be used should be provided to Maintenance of Way workers. In addition, when campcars are being used, the blue signal protection should be made applicable including the locking of the track at both ends.

As I explained on February 17, the House unanimously passed many of these amendments in 1985 but no action was taken by the Senate, with one exception. The full Senate Committee on Commerce, Sciences and Transportation did adopt in the committee an amendment offered by Senator Exon covering the harassment problems.

Now I will direct your attention to S. 1098 which was introduced by Senate Lautenberg and Mikulski.

Sec. 2. As to licensing of personnel engaged in the operation of trains, we feel it should be limited to the locomotive engineers, because the engineers are the ones operating the throttle and brakes. Also, as related to the other crafts we do not believe licensing would have any practical effect in improving safety. RLEA does support minimum training requirements for all employees, but that does not necessitate licensing.

Sec. 3. RLEA supports written certification of predeparture inspections by qualified personnel. At present many such required inspections are not performed, and even if proformed, in many cases are not done by trained qualified employees.

Sec. 4. RLEA supports the increase in penalties in the Federal Railroad Safety Act. However, there should be comparable increases provided in all of the other safety statutes such as the Safety Appliance Acts, Signal Inspection Act, Locomotive Inspection Act, Block Signal Systems Law, Accident Reports Act, and the Hours of Service Act. The penalties have not been increased since 1976 and inflation has long wiped out the safety effectiveness of those increases. We strongly oppose personal liability of the employees. The railroads have enough weapons available to assure compliance with the various laws. Employees are constantly disciplined whenever violations occur.

Sec. 5. RLEA has no objection to the establishment of a system to record and classify safety defects according to type and severity of the hazard created.

Sec. 6. RLEA supports the provision to allow an employee the opportunity to be absent from work where the employee is impaired by alcohol or drugs. At present the employee is disciplined if he or she fails to report to duty, or reports to duty impaired. Obviously, safety concerns and common sense dictate that the employee be allowed to stay home from work and not be subjected to disciplinary procedures.

Sec. 7. RLEA agrees with the concept of providing additional relief where harassment exists, because the existing law has not been adequate to curb the problem. However, we believe that the best approach is that proposed by the RLEA in the February 17 testimony.

Sec. 8. We support the establishment of a Northeast Corridor Safety Committee.

We understand that H.R. 1774 introduced by request by Congressman Whittaker is the FRA proposal. Except for sections 2 (Authorization for Appropriations), 3 (Enforcement of Subpoenas and Orders), 6 (Jurisdiction Over High Speed Rail Systems), and 10 (User Fees) we strongly oppose the bill. The FRA is doing nothing more than acting as an alter ego of the railroad industry in making the other proposals in H.R. 1774.

For example various railroad safety laws sought to be repealed by the FRA have been on the books since the turn of the century. They provide statutory standards as opposed to administrative standards and, therefore, cannot be watered down by administrators who might make decisions based upon considerations other than improved safety. The railroads and the FRA attempted the same ploy to repeal these statutes in 1969 when Congress was considering the Federal Railroad Safety Act. Congress then unanimously rejected such proposal, and it should be defeated again for all of the same reasons.

We oppose the proposed restrictions in the use of reports, testimony, and documents of the FRA in private litigation for damages. Safety would be seriously compromised if there were not the fullest disclosure of the facts and the ability to use such documents in litigation. The lawsuits for damages are in reality the major reason for railroads to have safe operations. There is little incentive for the carriers to otherwise be concerned because the FRA certainly doesn't provide a significant impetus to the railroads. Last year, for example, the FRA imposed $3,151,000 in fines on the railroads out of 311,000 defects recorded by federal safety inspectors, or about $10 per defect found.

We have already discussed our position on increased penalties and personal liability of the employees and RLEA opposes the FRA proposal on these points.

In conclusion, we cannot overemphasize the importance that the Committee adopt the safety proposals of the RLEA.

Senator EXON. Thank you.

I have one question for each of you. First, since the tragedy in the Baltimore area—and we have heard and seen a great deal about the fact that warning devices have been turned off, were not working, were taped over, a whole series of things—have you had reports from the railroads that you represent since that time that convince you that railroad management is cracking down and fulfilling their role as managers of the railroads better than we had before that accident?

Mr. DEMPSEY. I do not know of anything personally. Mr. Johnston is the Vice President of Operation and Maintenance of the Association. He might have some views on that.

Senator EXON. Mr. Johnston has been here before. It is nice to have you back.

Mr. JOHNSTON. Thank you.

The same as Mr. Dempsey, we have not done a survey on this. In fact, I was quite surprised to learn today that there had been 69 violations since the January 4 incident. However, I am reasonably sure, if the FRA called these violations to the attention of the carriers involved through the collective bargaining process, that the employee was brought in and a fair and impartial hearing was held to ascertain just what happened and who was at fault.

Senator EXON. Thank you very much.

Let me ask the same question of you, Mr. Snyder. Since that accident there, have the unions tightened down on their rules and regulations and self-policing, that we could be assured that more caution and more checking is being done?

Mr. SNYDER. Yes, sir. Mr. Chairman, we are constantly working to improve safety—and my files are open to you and the staff of this committee so that you may see this.

I must say there is one thing I want to compliment the FRA on, and that was a result of the hearing in Senator Lautenberg's committee, relating to the automatic train control.

In my opinion, there is a good possibility that had automatic train control been in use the horrible accident in Chase, MD, might have been prevented. In 1973, the FRA for the first time, and we opposed this, allowed Conrail to remove the automatic train control.

You should also consider the testimony before this committee by Mr. Jim Burnett of the NTSB, who agrees with us on the importance of automatic train controls—this is one of the greatest safety devices you can use in the operation of a train.

As a result of Senator Lautenberg's committee hearings—the FRA has come out, and through regulation is recommending the implementation of ATC's in the Northeast corridor. The FRA believes that this will involve a $30 million expenditure over a two year period of time. Well, we disagree with the time period along with Senator Lautenberg. Two years is too long.

We also support the installation of automatic train controls throughout the country, because this device can prevent a lot of accidents. Hopefully, we will not have any more Chase, MD, accidents and all.

One other thing that is important is the training of the dispatchers, the training which I elaborated on. The trains are not being inspected at all, not fully.

Mr. Chairman, you must give standing to employees in actions where they seek to have violations corrected and the laws under the jurisdiction of the FRA administered. You must make it so that the workers would have the right to go into court to seek relief. We are asking for that. That is very important.

Senator EXON. Mr. Snyder, you heard the testimony earlier today, I am sure, by FRA Director Riley to the fact that he was disappointed and surprised that the unions had not made more appeals, I think he said you had only one amendment for which you as union people had petitioned.

Why is it that you have not seen fit to go to the FRA more than you have?

Mr. SNYDER. Well, Mr. Riley is absolutely wrong. We have filed several petitions. The Administrator has erroneously mislead you in thinking that the Petition filed by the Signalmen was the only petition filed.

Let me state something else, we have always cooperated with them. Any time they want us to meet with the carriers in anything, we have always done that. We spend a lot of money, a lot of money to do this, to improve the safety.

Mr. Riley's statement was not justified.

Mr. Chairman, Mr. Riley has worked very hard to blame unsafe conditions on human error. Of course we have human failure out there, and we regret this thing very much.

Yet in shifting the blame, he's covering up his responsibility out there, where if he had listened to us and some of the other people on some of these safety provisions that we have before you, and which the House has already passed, it could have prevented some of these accidents.

He never did talk about that. He did talk about the cost involved. Sure it is going to cost, but workers are getting disgusted out there. They file a claim, and I get calls regularly from the inspectors. Also, we don't have enough inspectors out there. They have too large a territory.

Anyway, I get calls regularly from inspectors all over the country telling me—I can't reveal their names—that they would like to do certain things, but their bosses are telling them, "just don't bother with it." Under this type of operation—that we have objected to so many times before is the so-called system safety plan. In other words, FRA gives the carriers an opportunity to settle all claims.

We attempt settlement before filing complaints with FRA, but this results in delay. That is not going to do the job, Mr. Chairman.

And whatever you do, do not give Mr. Riley more authority to discipline the employees. Do not do that.

Harsh discipline is not the answer. Just make an employee do what he is supposed to do and there, what he is assigned to do. We request that.

Mr. MANN. Mr. Chairman, I also want to add to that concerning why rail labor may not file as many petitions as Mr. Riley may like for us to file. The point is that the Federal Railroad Administration in its history has never granted any petition rail labor has ever sent to them, unless the railroad industry management agreed to it.

Senator EXON. I wondered when that was going to come out.

I thought probably that would have come out with the previous panel we had of the operating people who were here. The facts of the matter are, you have—under Democratic or Republican administrations, which Director Riley made quite a point of, you have never felt that the FRA was particularly receptive to suggestions or complaints that you would originate, is that right?

Mr. MANN. That is correct, Senator. You know, we just cannot be wrong all the time. There has to be some time when where we may be right.

Senator **Exon**. Mr. Dempsey, would you care to comment on that?

Mr. **Dempsey**. I do not see why it is impossible that they are wrong all the time.

Mr. **Snyder**. There is one thing you can do, Mr. Chairman. You can give the employees the authority to refuse to perform their duties when they feel a real, justified unsafe condition exists.

Senator **Exon**. Well, thank you very much.

I would ask, Mr. Dempsey, do you have anything to add or say to what you have been listening to?

Mr. **Dempsey**. No. I thank Mr. Snyder for his kind words for me and Mr. Johnston, and simply observe that it is not just those people that do not pay any attention to us; a lot of people do not.

Senator **Exon**. Thank you very much for coming, and we are adjourned.

[Whereupon, at 5:35 p.m., the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF W. GRAHAM CLAYTOR, JR., PRESIDENT AND CHAIRMAN OF THE BOARD, NATIONAL RAILROAD PASSENGER CORPORATION

On behalf of the National Railroad Passenger Corporation (Amtrak), I appreciate this opportunity to submit this statement in support of various safety proposals presently before the Committee. Ensuring the safety of our passengers and our employees is my top priority at Amtrak. The tragic events of the January 4, 1987 Chase, Maryland accident forcefully demonstrates the critical importance of ensuring that all trains—passenger and freight—be operated in as safe a manner as is humanly and technologically possible.

I am extremely pleased that the Secretary of Transportation and the Federal Railroad Administration have recently issued a proposed order to require that all locomotive operating on the Northeast Corridor be equipped with automatic train control (ATC) that will automatically stop the train if the engineer fails to reduce speed to that required by a signal. As you know, all Amtrak passenger locomotives operating on the Corridor already are so equipped, and similar modifications will be completed on our relatively few work train locomotives within the next few months. Had the Conrail locomotives been equipped with ATC, the Chase accident likely would never had occurred.

I also wish to commend the Committee for its work in reporting to the full Senate legislation that would authorize random testing of railraod employees holding safety-sensitive positions to determine whether there has been improper use of drugs or alcohol. I believe that the use of alcohol or drugs by employees performing safety-sensitve functions is the single most serious safety problem confronting the railroad industry, and I am pleased that an effective, reasonable means of reducing this risk has been reported to the full Senate. Amtrak urges prompt passage of the legislation.

Amtrak supports the American Association of Railroads in its efforts to improve rail safety. In addition, in our 1987 Legislative Program submitted to this Committee pursuant to section 302(b) of the Rail Passenger Service Act, Amtrak has proposed several safety-related initiatives. Because the Consolidated Omnibus Budget Reconciliation Act of 1985 already authorized Amtrak funding for FY 1988 and no additional Amtrak authorizing legislation is necessary this year, I wish to recommend consideration of several of those safety initiatives and other proposals for improving Amtrak's financial and operating performance. First, however, I will briefly comment on three rail safety issues that have been proposed to the Committee.

STANDARDS FOR POWER BRAKE INSPECTORS AND DISPATCHERS

The Railroad Labor Executive Association (RLEA) has urged the Committee to require the establishment of standards governing the training of power brake inspectors and of train dispatchers. Amtrak does not object to the establishment of reasonable training standards under which any railroad employee could be qualified to perform the inspections or to dispatch trains. Amtrak objects, however, to the establishment of any standards the real intent or effect of which would be to limit qualification to a single craft or group within a labor organization. Amtrak must retain the flexibility to apply its work force in as efficient and cost effective a manner as possible.

TOURS OF DUTY FOR ENGINEERS

The RLEA has proposed limiting to 22 the number of tours of duty a locomotive engineer can be required to work during any given 30-day period. Such a proposal should not be legislatively mandated, but rather left to the collective bargaining process. The effect of such a proposal would be to greatly increase Amtrak's costs of operation, and, ironically, to lower the earnings of some railroad engineers. Amtrak estimates that such a proposal would require the hiring of as many as 56 additional engineers at a cost of $2.8 million with no appreciable increase in safety.

RLEA also is proposing that engineers be given 8 hours advance calling time before having to go on duty. This proposal is apparently directed primarily at those freight railroads that do not have guaranteed "extra boards." On Amtrak, however, our extra board employees are paid for a full week's work whether or not they are called for duty, and for this compensation they are required to be available to fill in on short notice as required, for an absent employee or otherwise. This is the only way in which we can ensure the proper staffing of our trains in a cost effective manner. The full-time hiring of unneeded or only occasionly needed engineers serves no purpose other than over-employment.

MAINTENANCE-OF-WAY SAFETY

Finally, the RLEA has proposed extensive regulation of bridge safety equipment, bridges and trestles, and vehicles used by maintenance-of-way employees. The RLEA proposal also calls for mandatory reduction in speed of trains passing or adjacent to work areas.

As already noted, my chief concern at Amtrak has been the safety of our passengers and employees. I share the desire of Amtrak's maintenance-of-way employees to maximize safety at the worksite. However, the RLEA proposal far exceeds the reasonable requirement for a safe workplace, and would impose enormous costs on Amtrak. RLEA's proposal that all bridges and trestles have walkways and handrails for example, would require Amtrak to alter many of its bridge structures on the Northeast Corridor at enormous cost. Similarly, RLEA's proposal that all trains slow down when passing a work area would reek havoc on Amtrak's high-speed Northeast Corridor, where numerous crews work each day. To protect our workers, Amtrak employes flagmen to warn crews that trains are approaching, and we believe this is the most cost effective manner in which to ensure the safety of our crews.

Amtrak management works diligently to identify and correct unsafe conditions in the field. In addition, numerous safety problems are raised and resolved at Amtrak's Joint Labor Management Productivity Council. We will take every step we can to reasonably ensure the safety of our employees, and feel that the establishment of new standards and regulations is not necessary and is certainly unduly costly.

I now wish to address certain legislative proposals that would improve the safety of Amtrak's Northeast Corridor and Amtrak's financial and operating performance. Certain of these proposals were included in Amtrak's 1987 Legislative Program submitted to the Congress on February 15, 1987. Those proposals, with minor amendments, are repeated here, so that the remainder of this statement is an update to our 1987 Legislative Program.

I. NORTHEAST CORRIDOR IMPROVEMENT PROJECT

Title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) authorized $2.5 billion for the Northeast Corridor Improvement Project (NECIP). To date $2.2 billion has been appropriated. A number of important safety issues have surfaced in the aftermath of the Chase, Maryland accident that demand prompt attention, some of which should be added to the projects spelled out in section 704 of the 4R Act to be considered for funding should additional appropriations be made for NECIP. Amtrak is proposing to amend Title VII in order to add a number of new safety related projects to the current list. Amtrak believes that these safety-related projects should be allowed to compete for possible future funding equally with those projects already on the list and requires no new budget authority.

The new projects Amtrak is proposing to add to NECIP include improvements to communications and signal systems and the electric traction system. Some Amtrak signals have components over 40 years old and are in various states of deterioration. These components are currently being replaced on a case-by-case basis when failure occurs. In addition, Amtrack is proposing that the Congress authorize and fund through NECIP certain ongoing modifications to its Northeast Corridor passenger car and locomotive fleet that are being implemented strictly to improve safety.

Amtrack attaches hereto as Appendix A[1] proposed legislation to amend the 4R Act to include these safety projects. I note that section 9 of S. 1098, the Rail Safety

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[1] The appendices were not reproducible.

Improvement Act of 1987, introduced by Senators Lautenberg and Mikulski, includes this proposal, and I urge the Committee to favorably act on it.

II. AMTRAK LIABILITY

Amtrak has also proposed a change in the liability system under which employees recover damages for on-the-job injuries. Amtrak believes that the existing system—the Federal Employers' Liability Act (FELA)—neither acts as an incentive to promote safety nor encourages employees to seek rehabilitation or return to productive employment. In addition, FELA costs Amtrak—and the American taxpayer—as much as $20 million each year in excess of the workers' compensation programs that cover nearly all other industries.

FELA is the federal statute that establishes a system for railroad employees to recover damages for on-the-job injuries. It was enacted in 1908, before many state workers' compensation laws were passed, and was last significantly amended in 1939. Amtrak is proposing legislation that would transfer jurisdiction over resolution of claims involving job-related injuries of Amtrak employees from FELA to the various state workers' compensation acts. Under FELA, an employee who is injured on the job is only compensated if it is determined that his injuries were caused by the negligence of the employing railroad, its officers, agents, or employees, or from deficiencies in equipment or facilities. The amount of damages is determined through negotiation or litigation on a case-by-case basis.

Amtrak's experience with FELA has shown it to be a counter-productive, unfair and unjustifiably costly system of compensating railroad workers for on-the-job injuries. It is inconsistent with the vast majority of state workers' compensation laws which operate on a no-fault basis. Under state compensatin laws, no determination of negligence is made, and the cause of a work-related accident or illness does not affect the amount of compensation. In the aftermath of an accident, concern should be focused on correcting the circumstances that caused the accident and on rehabilitating the employee so he can return to work continue to lead a productive life. Under FELA, however, the necessity to prove fault in an adversarial proceeding often leads those involved to obscure the true cause of an accident, creates tension between the employee and railroad, and encourages litigation.

FELA provides only for lump sum cash awards, rather than periodic payment provided under worker's compensation laws to injured workers who may be partially or permanently disabled. The one-time award feature of FELA encourages employees to opt for large permanent disability settlements when an employee might otherwise be able to return to work. Under FELA, an employee who succeeds in persuading a jury that he is permanently disabled, for example, may be awarded an amount the jury determines he might have earned in his lifetime (often well in excess of $1 million). There is no mechanism in the law, however, that provides for an offset or recoupment for other payments received in connection with the injury or amounts subsequently earned by the employee, who has already "proven" that he is not capable of working any longer. FELA also encourage exaggeration of injuries, excessive periods of claimed disability, and sometimes excessive or unnecessary medical treatment. Mindful of the relation betweeen wage loss and ultimate recovery, plaintiff's lawyers, whose fees depend upon verdict size, have little incentive to encourage their clients to return to work as soon as they are able to resume their duties. The injured employee is not the only beneficiary of delay or exaggeration since his counsel typically takes at least 25 percent of any award plus all expenses associated with litigation.

State workers' compensation programs pay a fixed percentage of the employee's wages while he is injured and unable to work. Each state establishes a fixed schedule of benefits based on the specific injury and duration of disability to avoid the need for protracted litigation in each case. If there is a disagreement over a factor that affects the amount of compensation, such as whether the employee has a permanent impairment, the employee may request a hearing before the state's workers' compensation agency and may appeal that decision to the state court. The system is designed to allow employees in the same state with identical injuries, salaries, and loss of time from work to receive identical benefits with a minimum of effort in actually obtaining the benefits.

In contrast, FELA results in uncertain and unequal awards because each case may be litigated in civil with no standards concerning appropriate compension and no limits on awards. This results in excessive jury verdicts in some cases. Other claimants under FELA, however, may receive much lower payments or nothing at all for similar injuries suffered in the course of their employment depending upon their ability to show that the employer was actually negligent and then appeal to a judge or jury concerning the amount of injury they have suffered. No legitimate compensatory purpose is served by excessive jury awards, while claimants who receive nothing may face great financial hardship that would be alleviated by a no-fault system.

The General Accounting Office recently completed a study of FELA claims against Amtrak, and concluded that the existing system costs Amtrak an average of nearly 43 percent more than comparable liability under state programs. There is no public policy justification for this cost to Amtrak and the American taxpayer.

Therefore, Amtrak recommends that Congress enact legislation which would require state workers' compensation laws to be the exclusive remedy with regard to work-related claims against Amtrak. Amtrak believes this would improve the relationship between management and its employees and reduce Amtrak's costs to the federal government. While many in railroad industry argue that all rail employees should be covered under workers' compensation, Amtrak believes that this concept be tested on Amtrak before applying it to the entire railroad industry.

In this connection, we suggest statutory language that would call for Amtrak's employees to be covered under applicable state workers' compensation acts and to be exempt from the FELA for a test period of three years. See Appendix B to this statement, which is a proposed new Section 1102 to the Rail Passenger Service Act. Depending on the success or failure of this experiment, Congress could then permit Amtrak to return to FELA or extend the applicability to Amtrak of the state workers' compensation laws. In this way, the validity of arguments for and against this change can be tested and evaluated in practice before any permanent change is decided upon.

In addition to the legislation governing liability for injuries to Amtrak employees, Amtrak also recommends legislation which will reduce the cost of tort suits brought against the corporation. This proposed legislation will eliminate (1) unjustifiably high costs attributable to the threat of punitive damages awards, (2) liability for prejudgment interest, (3) double recoveries by plaintiffs in tort actions when they are awarded damages for which they have already been compensated, (4) excessively large attorney fees, and (5) joint and several liability which can result in the corporation paying for damage it did not cause. All these are costs that are ultimately passed on to the federal government. This recommended legislation is included as our proposed new Section 1103 to the Rail Passenger Service Act, included as Appendix B to this statement.

Experience has shown that plaintiffs often use the threat of punitive damages to justify settlements far in excess of the amount required to compensate an injured party for the damages he has actually suffered. Amtrak, therefore, proposes that the imposition of punitive damages against Amtrak in any civil action arising from personal injury or death be prohibited. Punitive damages are not intended as compensation to an injured person. Instead, they are intended solely to punish a defendant. Abolishing the corporation's liability for punitive damages will not deny any injured person full compensation for his or her injuries and will prevent these costs from being passed on to the federal government. Most commuter railroads such as New Jersey Transit, SEPTA, MBTA, etc., are not liable for punitive damages. Similarly, the United States is immune from the imposition of punitive damages in personal injury and death actions pursuant to Title 28 Section 2674 of the Federal Tort Claims Act. So long as Amtrak receives federal financial support, Amtrak should be granted the same immunity.

Amtrak also belives that it should be exempt from liability for prejudgment interest. Prejudgment interest is available to plaintiffs in personal injury and death actions in some states. In essence, it retroactively assesses interest on a debt which did not exist prior to the entry of a judgment following a trial. In Amtrak's view, it is unfair to penalize the corporation and the taxpayer for court delays or other circumstances beyond its control which make prompt resolution of disputed claims impossible. Amtrak's proposal would bring Amtrak's liability into conformance with that of the United States, which is not liable for prejudgment interest in personal injury or death claims, as expressed by Title 28 Section 2674 of the Federal Tort Claims Act. The interest rate proposed by Amtrak is the same as that provided for by Title 28 Section 1961, which governs interest on civil judgments in United States District Courts.

The collateral source rule excludes evidence of benefits which a plaintiff has received or will receive to reduce compensatory damages claimed in a tort action. For example, medical bills paid by health insurance may still be claimed as damages in a personal injury action. Likewise, a plaintiff may claim a wage loss in a personal injury suit even though he is actually being compensated under a disabililty plan. The collateral source rule thus permits a plaintiff to recover twice for the same damages, once from the collateral source and once from the defendant in the tort action. There is no justification for this double recovery against Amtrak under a tort law system which is intended only to compensate injured parties for their actual losses, not to provide windfall recoveries. Amtrak recommends that the use of the collateral source rule in personal injury and death actions against the corporation be prohibited.

The fees that attorneys who represent plaintiffs in personal injury and death actions againt Amtrak may charge their clients should be limited. Amtrak proposes legislation that is intended to reserve a larger proportion of any settlement or judgment for the plaintiff by reducing the sometimes unconscionably high fees charged by attorneys in tort actions. It is similar to statutes enacted by various states.

Finally, Amtrak recommends that it should be exempt from the imposition of joint and several liability. The doctrine of joint and several liability allows a plaintiff in a personal injury or wrongful death action to collect damages from a defendant which are caused by the acts of someone else. For instance, under joint and several liability an automobile passenger injured in a crossing accident between a drunk driver and an Amtrak train may collect 100 percent of his or her damages from Amtrak even though a jury has decide that the accident was caused 95 percent by the fault of the driver and 5 percent by the fault of Amtrak. This is inherently unfair. Amtrak proposes that the law be changed to require a jury to determine the amount of damages actually caused by Amtrak's negligence, and would limit a plaintiff's ability to collect damages from Amtrak to those damages Amtrak has actually caused.

Amtrak attaches hereto as Appendix B proposed legislation to accomplish the reform of compensation for employee injuries and of liability with respect to other claims.

III. STATE AND LOCAL TAX-EXEMPT BONDS

State and municipal agencies retained broad authority under the Tax Reform Act of 1986, P.L. 99-514, to issue tax-exempt bonds for capital projects. This method of financing is routinely used to fund the construction of roadways, bridges, airports, seaports, and local transit facilities. The sale of tax-exempt obligations has enabled public authorities to reduce finance charges for construction of transportation projects and has provided access to private capital markets to supplement direct capital grants from federal, state and local governments.

The new tax law allows continued use of tax-exempt bonds to finance mass transit projects. Amtrak facilities that are used jointly by mass commuting agencies have been and will continue to be eligible for this type of financing.

Amtrak plans to use tax-exempt bonds in lieu of direct capital grants to leverage additional state and local financing of rail related projects (such as the Philadelphia 30th Street Station) that qualify as mass commuting facilities. However, a significant problem has been identified under Section 103 of the Internal Revenue Code, the provision which prescribes the criteria for tax-exempt bonds. Such bonds may not be guaranteed—directly or indirectly—by an agency or instrumentality of the United States. Even though the Rail Passenger Service Act does not provide for federal guarantees of bonds issued by states or localities, there are provisions of Section 602 of the Rail Passenger Service Act that might be construed as a federal guarantee of any such issues used for improvement to Amtrak facilities. In particular, subparagraph (4)(a) of Section 103(h) of the Internal Revenue Code states that any entity "with authority to borrow from the United States shall be treated as an instrumentality of the United States" for the purpose of Section 103. Amtrak believes that its potential authority to obtain loans guaranteed by the United States under Section 602 of the Rail Passenger Service Act and the Secretary's limited discretion to deny such guarantees to Amtrak might be viewed as "authority to borrow" from the United States under Section 103(h)(4)(A), thereby precluding the issuance of tax exempt bonds for Amtrak projects. If Amtrak is to overcome these problems, the Rail Passenger Service Act must be amended to make clear that Amtrak is not an instrumentality of the federal government and subsection 602(i) deleted to remove the limitation on the discretion of the Secretary of Transportation in deciding whether to guarantee Amtrak loans. This amendment is included as Appendix C to this statement.

IV. PREFERRED STOCKHOLDER BOARD MEMBERS

Section 303(a)(1)(E) of the Rail Passenger Service Act directs that two members of the Amtrak Board of Directors are to be selected annually by the preferred stockholder of the Corporation. While the law makes specific provision for all other

Board members to serve until their successors are appointed, no such provision is included for preferred stockholder representatives. In order to obviate the need for the annual appointment of the two preferred stockholder members, Section 303(a)(1)(E) should be amended to extend to directors selected by the preferred stockholder the privilege of serving until replaced. This amendment is included in Appendix D to this statement.

V. SALARY CAP

I strongly urge the Committee to consider removing the salary cap that presently governs all Amtrak employees. Even though Congress mandated that Amtrak is to be operated as a for-profit corporation, Amtrak is nonetheless subject to an employee salary cap that permits a maximum salary equivalent to Executive Level I of the Federal Government. Compared to other railroads, airlines and other industries, and even to publicly financed commuter railroads such as New Jersey Transit and the New York Metropolitan Transit Authority, Amtrak's middle and top management are significantly underpaid. Although the challenges facing Amtrak grow tougher every day, we are unable to retain our experienced managers or attract qualified replacements because of our comparatively low salary scales.

Congress should now relieve Amtrak from the salary cap. Amtrak is and will continue to be subject to Congressional oversight by both Senate and House Committees on transportation and on Appropriations. Financial reality and responsibility—including the annual need to seek grants from Congress—can act as the control Congress presently exercises over Amtrak's budget, with the flexibility to ensure that Amtrak is able to employ the most talented, qualified work force available. Also, all significant salary actions are subject to approval of our Board of Directors which includes the Secretary of Transportation. We cannot continue to afford to lose the kind of talented managers that already have left, nor take the chance that the most qualified candidates to lead Amtrak cannot afford to accept the position.

Exhibit E lists Amtrak's twelve top officers and their current salaries compared with compensation levels of their counterparts in the railroad industry (1986 Hay Annual Railroad Compensation Analysis) and in industry generally (survey by Executive Compensation Services). The comparable railroad compensation for these top positions is on the average 114 percent higher than Amtrak can pay, while the comparable positions in industry generally are paid 122 percent higher than Amtrak. The existing cap of $99,000, while giving a little more leeway than the recent limit of $86,000, still holds the compensation level for our top people—and the middle management group below them—at a noncompetitive level.

What this means is that as our really good younger management people progress and become more experienced and more valuable to Amtrak, the pay cap on senior management necessarily compresses their own compensation and indicates to them that their future at Amtrak is severely limited. For the many with heavy family educational and other obligations, there is no choice but to accept the far higher pay readily available to these talented people elsewhere. Amtrak has been badly hurt by these losses in recent years and will suffer severely in the years ahead unless this problem is solved.

Among the most valuable officers we have lost in recent years have been: Jim Callery, Vice President—Sales, at an Amtrak salary of $75,000, lost to British Airways at a 100-percent increase in compensation; Paul F. Mickey, Executive Vice President—Law and Public Affairs, at an Amtrak salary of $76,900, lost to a local firm at over 75-percent increase in compensation; and George F. Daniels, Vice President—Labor Relations (and largely responsible for Amtrak's new labor agreements), at an Amtrak salary of $75,000, to the National Railway Labor Conference at some 20-percent increase in compensation. In the middle management ranks, the losses of our best and brightest have been even more extensive, and many of them have gone for higher salaries to publicly financed commuter railroads, such as New Jersey Transit, New York's MTA (including Long Island Railroad and Metro-North), etc. In the last two and a half years, for example, Amtrak has lost some 40 top management people to other employment, generally for significantly increased pay. Unless we can stop this hemorrhage, Amtrak's efforts to improve its cost-effectiveness and service quality will suffer severely.

Section 303(d) of the Rail Passenger Service Act also contains an ambiguous provision that appears to limit the President's salary to $85,000 per year, even though the Executive Level I for other officers is now higher than this. This does not bother me personally, and I am in no way requesting a raise in pay for myself, but for any successor it will present an intolerable management problem. I don't believe it will be possible to attract a qualified new chief executive officer for Amtrak without the legislative change we request here.

Accordingly, Amtrak attaches hereto as Appendix F a proposal to eliminate the existing salary cap.

IV. CHIEF EXECUTIVE OFFICER

Finally, I aks that the Committee consider a minor change to the Rail Passenger Service Act that would transfer the statutory duties of the President of Amtrak to the new post of Chief Executive Officer. No changes in the nature of those duties is proposed; however, this change would give Amtrak added flexibility in structuring its administration of the corporation's activities.

STATEMENT OF ANDREW T. MALLECK

This statement and related comments are made in support of legislation that would help correct some of the problems that face Maintenance of Way workers today.

Maintenance of Way workers toil in the most dangerous segment of railroad employment. In the years 1980 through 1985, 74,229 maintenance workers were injured, and 116 were killed doing their jobs. This, unfortunately, is a greater combined total than any other class of rail worker.

Maintenance of Way workers are subjected to the risks that generate these numbers simply by showing up for work. Maintenance of±Way work is physicially strenuous. The job conditions are sometimes below what other industries accept as normal, and safety on the job is sometimes lacking. The Maintenance of Way worker often works on tracks that are in close proximity to "live" track. The proposals that follow would help—not just help the worker, but help the rail industry by reducing the lives and limbs that must be paid for.

Proposals as follows:

A. Establish standards for bridge safety equipment such as nets, safety lines, and in some situations, the requirement for "safety boats." Rail workers are often required to work on bridges and trestles that are high enough to cause serious injury or death should a rail worker fall. The use of the above mentioned safety devices would help lower risk for these rail workers that must work 50, 100 feet and more above the ground, highway, or river below.

B. All bridges and trestles should have standards for safe walkways and handrails. The maintenance of Way workers are required to walk across, repair and maintain these bridges, sometimes at night, and sometimes in inclement weather. Many bridges in this country have no walkways or handrails, and many others are equipped with these devices, but they are installed or maintained in such a way as to make them ineffective. The needs for walkways are obvious. Not only do they make worker movement on these bridges safer, they provide a place to get clear of a passing train when the worker does not have time to get to either end of the bridge when a train approaches.

C. Safety standards for vehicles that transport rail workers, in particular the trucks and buses that Maintenance of Way workers ride in every day. All too often the rail worker rides in the same "compartment" as his tools. The results from an accident where spike mauls, claw bars, tie tongs, small motorized tools and other implements are free to fly about among the rail workers are too horrible to imagine.

D. On track equipment should not be track insulated. Insulation on track equipment prevents that equipment from activating signals and crossing gates. Without the capability to "shunt" the signals, the track equipment does not show up on the train dispatcher's board, and does not activate the signals to notify an oncoming train of their presence. The same problem applies to crossing circuits. The track equipment does not activate the railroad crossing warning devices. This in trun leaves both the equipment operator and the passing motorist to their own self-defense.

E. There should be standardized blocking procedures in effect for work areas, and trains should be required to reduce speed when near a work area. With track equipment creating a great deal of noise, and the physical portion of track work requiring a great deal of movement, there is often great difficulty avoiding passing trains. With lower train speeds near work zones, the track workers would have more time to react to passing trains.

F. The safety procedures portion of the Hours of Service Act when campcars are required to be used should be provided to Maintenance of Way workers. In addition, when campcars are being used, the blue signal protection should be made applicable, including the locking of the track at both ends of the siding where the campcar is located. This measure would help prevent trains and/or loose railroad cars from running into these campcars.

The deplorable safety record of railroads cry for repair. The need for changes as described in this testimony is evident, and with legislation should help reduce the loss of rail workers life and limb.

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

This statement is submitted for the record on behalf of the National Association of Regulatory Utility Commissioners (NARUC).

The NARUC is a quasi-governmental, nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty states, the District of Columbia. Puerto Rico and the Virgin Islands which are engaged in the regulation of utilities and carriers. Our chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of government regulation in America. The association greatly appreciates this opportunity to make its views known on several important issues regarding rail safety.

S. 1098 would mandate that the Federal Railroad Administration (FRA) license personnel engaged in the operation of trains and require annual medical examinations as well as periodic testing for drugs and alcohol. This legislation would also require that a license be denied to employees who have legal or behavioral problems which could affect their ability to operate a train safely even if these problems occur off duty. The bill further proposes the mandating of documented per-departure equipment tests by qualified personnel with the records kept by the carrier for one year.

The basic provisions of the bill are, in my estimation, sound and necessary. Comparing these requirements to the motor carrier requirements, one finds many similarities. The Secretary of the Department of Transportation has been required by Congress to implement a national uniform commercial vehicle operators license. Within this mandate Congress dictated that a uniform written test, road test, and physical examination requirement by established and that certain actions result in suspension of the license.

It is not unreasonable to view both industries as performing like functions. Each operation is responsible for the safe delivery of its cargo and the safe operation of the vehicle. Government has an overriding interest in safety of the public. It is not unreasonable to establish minimum standards for operators who control 80,000 lb. tractor trailers or 8,800 ton, mile long trains.

Another item of concern is the FRA inspection procedure. Currently, a violation report is issued only if a safety defect, found by an inspector, is not corrected within a certain period of time or if the railroad falsifies the correction report. Generally, the FRA does not seek penalties for defects identified at the time of the initial inspection, no matter how numerous or serious. Requiring only that the railroad fix defects after they are foujnd by FRA inspectors is not a sound enforcement policy. The railroads are mandated by rule to abide by the regulations. A defect is a violation of the regualtions. The FRA's violation procedure needs to be reconstructed to reflect an affirmative enforcement posture.

Another example of a weak enforcement policy established by the FRA is the enforcement of their current drug and alcohol rule. Although the rule itself is straightforward and could be an effective tool, the implementation of the rule is inadequate. Of the five separate disciplines within the FRA, only one, the operating practices inspector, may enforce this rule. This is done by reporting to a supervisor that he might want to observe the crew of a particular train. If the railroad supervisor fails to observe the impaired individual (e.g. doesn't look, doesn't know what to look for) the inspector can take no action until the train is actually moving. At this point the inspector can report the individual to the supervisor and require that he/she be removed from the train. This may be too late. Allowing the impaired crew member to stay on the train even a short time, endangers the crew members, the public and the individual himself. Better enforcement policies can and should be established by the FRA.

While there has been a decrease in the number of derailments in recent years, railroad employee deaths and injuries are continuing to rise. There were 946 injuries in 1986, which is over a 100% increase from 1985. Deaths rose from 46 to 57. The reasons for these increases are unclear; we believe that a study should be initiated to determine if additional safety rules are necessary or if existing safety rules need to be more stringently enforced.

There was also an increase in rail highway grade crossings deaths from 582 in 1985 to 616 in 1986. Sight distances at rail highway grade crossings have been an issue for years. The Federal Highway Administration has published recommendations for the minimum sight distance triangle at rail highway grade crossings. However, these minimum distances, required to allow motorists to see approaching trains and pass through the crossing safely, have not been adopted as a rule by either the Federal Highway Administration or the FRA. We would encourage these agencies to adopt these recommendations as rules.

Recently, there has been a suit brought in Federal District Court against a municipality in Tennessee challenging the city's right to set maximum speed limits for trains through their town. The railroad argues that the ordinance is preempted by the Federal Rail Safety Act of 1973. If the court rules that, indeed, the Railroad Safety Act of 1973 preempts the authority of local govrnments in this area, it will have a major impact on thousands of municipalities in the United States. Local officials who are most familiar with the condition of grade crossings and traffic patterns will no longer be able to restrict the speed of trains through highly populated areas. This means that, if the railroad has Class IV track in a city, trains could travel at 60 mph through the middle of the town. It is our hope that this was not the intent of Congress. If the Courts rule otherwise, we would encourage Congress to amend the Railroad Safety Act of 1973 to reinstate the authority of cities to set appropriate speed limits.

Since 1982 the FRA has had a rule that allows a railroad to "except" any track or any portion of track, regardless of condition or location, from all FRA track safety standards if train speeds are restricted to 10 mph and the number of cars per train carrying hazardous materials is limited to five.

The problem with this rule is twofold. First, the railroad is not required to report excepted track to anyone. The rule only requires a train order bulletin to the crew. The railroad may except the track at any time and also reclassify the track to any class they wish at random.

The second problem is enforcement of the excepted track speed limit. FRA track inspectors are not allowed to enforce track speed restrictions. Operating practice inspectors are; however, they are not allowed to enforce track standards where the excepted track rule is found. Therefore, no inspector is allowed to enforce the 10 mph limit on excepted track. Experience indicates that trains travelling on excepted track are constantly involved in minor derailments which increase cost and delay shipments. This is dangerous to the employees because every derailment has the potential to cause injury to the crew. Hazardous materials that pass on excepted track are at greater risk due to the frequency of derailments.

The solution is to allow excepted track designations for only limited time periods in order to allow the short lines and branch lines to rehabilitate their track. The time periods should not exceed 120 days for each 10 miles of excepted track. After the allowed time period has lapsed, the tracks must meet Class I standards.

Lastly, the Federal/State Participation Program Grants have diminished over the last two years from the 50% allowable reimbursement to now a little over 20%. The states vitally want to continue this program that gives the federal government an FRA certified inspector for less than one half the cost of a federal inspector. This inspector conducts the same inspections as an FRA inspector and submits violations to the U.S. Department of Transportation for the adjudication of all penalties. All penalties go to the U.S. Treasury. Gentlemen, this is a bargain and worthy of the 50% funding. Many states faced with diminished funding are strapped for funds and may face layoffs. One state, New Mexico, recently dropped out of the program because of the shortage of funds. The statistics that indicate that the decrease in derailments surely could not have been achieved without the states assisting in the inspection and enforcement process. Surely the federal government can provide the 50% funding if the states are willing to provide 50% to enforce the federal safety rules and regulations.

OFFICE OF THE INSPECTOR GENERAL,
DEPARTMENT OF TRANSPORTATION [DOT],
Washington, DC, June 1987.

Attn: Hot Line Centers.

Subject: When a safety watchdog withholds appropriate action, it is a worse deception than a direct fraud. (GAO Case No. FP 87-30)

DEAR SIR OR MADAM: In 1986, I wrote a series of letters to the FRA in which I documented malfeasance in accident reporting, and malpractice in the distribution of tonnage in the makeup of trains.

In response, the FRA abused the public trust by their calloused and don't care dismissal of the malfeasance and malpractice. Here is their "don't care" response toward improper accident reporting: "The carrier submitted to the FRA the required information, on the proper forms, within the specified time limits."

And here is their "calloused" response to the unacceptable risk of improperly made-up trains. Mind you, there were three big accidents that occurred in Bexar County, TX due to improperly madeup trains. An epidemic of whiplash, three accidents within a time span of nine months. But per FRA, the profit margin outweighs safe train makeup: "The only thing the railroad sells is service and in order to be viable in today's market the carriers must take advantage of their ability to speed up transit time by reducing switching time enroute."

The FRA defenses the indefensible and protests too much. Reference is made to Accident Report U0866, where the FRA adopted disinformation from the carrier's report. The carrier evaded the true cause of the accident, which was improperly madeup train. I said so, and the NTSB said so in Report FTW-FR-10. But when I said so, and pointed to the weakness of the carrier and FRA findings, the FRA belittled me:

PREPOSTEROUS

"I (FRA) find your innuedoes concerning our handling of an accident investigation preposterous. (Invite comparison of the FRA and NTSB reports to see whose truly "preposterous")

LUDICROUS

"To accuse FRA personnel of covering up or ineptitude in an accident investigation is absolutely ludicrous." (Invite review of "ludicrous" cases found in DOT IG File Z-086 covering the Cibolo, TX accident; nd FRA Complaint File L5-SP-6068).

No lessons are learned. The consist of the above train included (1) a lumber car formerly bad-ordered (FBO) and, (2) a shifted load of bridge timbers. Mind you just five months earlier, a formerly bad-ordered (FBO) car of bridge timbers caused the catastrophic spill in the Medina River (14 Sept. 1985).

Saying, that my letters documenting malfeasance and malpractice have received shortshift from the FRA. But they were favorably received elsewhere. For instance, the Rail Labor Executive Association (RLEA) included the concern for improperly madeup trains with their 7 October 1986 petition seeking regulation upgrades from DOT's Research and Special Programs Administration.

What is amazing about all of this is the fact that me and my safety minded cohorts have never presented a concern that had merit in the eyes of the FRA. And I'm talking about a time span of eight or nine years. It is truly amazing, "even a blind sow will run on to an acorn now and then." But then again, we are the ones that caught the FRA redhanded in scapegoating a locomotive engineer, reference DOT IG File Z-086.

Anything goes in accident reporting. The FRA has got to clean-up their act. A change must be made to restore confidence in their annual accident statistics. Broad findings are presented below to help in the clean-up. It is not a exhaustive list, but a start:

1. Lack of Guidelines.—There is no uniformity in accident reporting. The need is for some guidelines in determining the "Primary Cause" of the accident. It is important because it is the only code carried forward in the annual Accident/Incident Bulletin. Dare to come up with instructions that will tell the carrier which came first, the chicken or the egg. Give them a litmus test of some sort as a guide in separting the "Primary Cause" from "Contributing Causes."

2. Reporting Concept.—There is no way that the "single cause" concept employed by most carriers will capture the complexity of most derailments. Under "Derailment Investigative Procedures," the Assn. of American Railroads (AAR) recognized "that a derailment may be combination-caused (and should be reported as such) * * * to more accurately reflect the true situation." Saying that the carriers are not making full disclosure and, thereby shortchanging accident experience.

3. Contradictions.—Anything goes, many times the accident report will contradict itself. For instance, the carrier will report a mundane "Cause," but then spill-the-beans as to the true cause within their narrative description of the accident. And sometimes, data in the body of the report fits the profile of overloaded train; or fits the profile of an improperly madeup train (tonnagewise). But the FRA has the decency not to notice these things.

4. Misleading Category Structure.—A false picture is presented by the Category Structure. The FRA makes much of the increasing percentage of "Train Accidents

Resulting from Human Factors." And to better deal with the increase, the FRA seeks authority to discipline employees. (A sidenote: Our prayer, lead us not into the tender mercy of the FRA.) But back to the subject. Fully 15% of the accidents under the heading of "Human Factors" are attributed to Cause Code 570 "Buffing or Slack Action Excessive." The engineers are given a blackeye. The inference being "bad train handling" on the part of the engineers. Not so. Evidence is coming to light that more accurately fixes the blame. Management malpractice is causing a good many of these accidents. Management pays no attention to distribution of tonnage in the makeup of the train, which generates the "Buffing or Slack Action Excessive."

Anything goes in accident reporting. Disinformation is accepted from the carriers without question. Entry of such raw data into the Annual Accident/Incident Bulletin paints a false picture. Taxpayers are defrauded when the FRA makes decisions and allocates resources based upon patterns adduced from this raw data.

The carriers have been less than candid in reporting cause of accidents. They shade the truth at every opportunity. Much management fault is hidden from view by inventive usage of Cause Codes. Anything goes, no checks and balances. It is believed that the principle hiding places for management fault is in the following three Cause Codes. As yet, cannot figure out the dumping ground for Undesired Emergency (UDE) application of brakes (only 4 acknowledge in CY-1985 in code 405).

PRINCIPAL DUMPING GROUND FOR MANAGEMENT FAULT

1. Human Factors.—Cause Code 570 Buffing or Slack Action Excessive. As previously discussed, there is no way that all of these accidents, about 175 per year, are caused by bad train handling on the part of the engineers. Management pays no attention to the distribution of tonnage in the makeup of the trains, which generates the dangerous "pop-the-whip" action.

(2) Mother Nature.—Cause Code 713. "Interaction of Lateral/Vertical Forces (Includes Hormonic Roll). Accidents are being attributed to "Harmonic Roll" when actually the accident was caused by either improperly madeup train (Acdt UO866 on 28 Feb 86) or overloaded cars (Acdt U7375 on 23 Nov 85). In both of these examples, the trains were traveling well beyond the speed in which the "Harmonic Roll" normally occurs. In CY-1985, 100 accidents were attributed to Cause Code 713.

(3). Miscellaneous.—Cause Code 799 "Other Miscellaneous Causes. For example, the catastrophic accident near the San Antonio Airport on 8 June 1986 was assigned Cause Code 799. Per the FRA report, the primary cause of the accident was improperly madeup train. Carriers are allowed to use Cause Code 799 on a temporary basis, but "when the final determination is made, a corrected report must be forwarded." But nobody ever sends in a corrected report. In CY-1985, There were 57 accidents attributed to Cause Code 799.

The following case proves that anything goes in accident reporting. And it proves that the FRA is slow to detect patterns; and it shows that no lessons are learned from accidents. The FRA is just a "bean counter" in gathering accident statistics. They don't look for common denominators. Here we have four derailments involving unit gravel trains. The common denominator is SP-345xxx series cars. And the cars are overloaded per the carrier's own accident report. Perhaps if the FRA hears it from the DOT IG, they will act on the following:

A PATTERN OF ACCIDENTS THAT WARRANTS PRIORITY ACTION

Inclosure 1 shows a comedy of Cause Codes assigned to derailment of gravel trains (SP-345xxx series cars). Each of the last four derailments have been assigned a different Cause Code. For example, (1) Harmonic Roll; (2) Broken Rail; (3) Coupler Mismatch, high/low and; (4) Side Bearing Clearance Improper. No pattern here from which to take remedial action. But everybody knows the true cause of these gravel train derailments, but don't dare speak up. The cars are overloaded (Cause Code 706). Simple as that. Overload is proven by tonnage figures, and by pictorial evidence as late as 13 May 1987.

The FRA has refused to act in the face of malfeasance and malpractice on the part of the carriers. They have displayed a don't care calloused attitude toward unacceptable risks. But I have not dropped the matter. I have sought and am seeking second opinions in regard to my "preposterous and ludicrous" concerns. Now, I present the concerns to you in recognition of your responsibility in the area.

Perhaps I have been remiss in not bringing my findings to you first. In seeking a good faith hearing, I have called the safety concerns to various groups to include congressional committees, Rail Labor, the General Accounting Office (GAO), and the National Transp. Safety Board (NTSB). My safety research has or will appear in transcripts of hearings conducted by Senator Lautenberg, Congresswoman Collins, and Congressman now Senator Wirth (GPO 99-169). These are serious problems, that should have addressed by the FRA in the beginning.

Inclosure 2 presents my 20 January 1987 letter to the General Accounting Office (GAO), subject as above. The letter is easy to understand, it requires no railroad operational expertise. It lays out three accidents and documents how three separate entities investigated these accidents. I refer to the carrier report and the corresponding FRA reports, and the corresponding NTSB report of the same accident. The following two points come out loud and clear in Inclosure 2:

1. Improper Accident Reporting.—The carriers are submitting improper accident reports in evasion of the true cause of accidents. Thereby, the annual FRA Accident/Incident Bulletin presents a false picture, and has limited utility as a management tool.

2. Improper Makeup of Trains.—Management pay no attention to distribution of tonnage in the makeup of trains. And that is the underlying cause of many accident now attributed to other mundane causes.

In conclusion, when a safety watchdog, such as the FRA, withholds appropriate action, it is a worse deception than a direct fraud. I would be pleased to amplify upon any aspect of this presentation. Request advice as to what action is accorded this submission to the DOT Hot Line.

Sincerely yours,

WAYNE W. BATES.

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